

BARNSELY METROPOLITAN BOROUGH COUNCIL

This matter is not a Key Decision within the Council's definition and has not been included in the relevant Forward Plan

Report of the
Executive Director,
Development,
Environment &
Culture

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Pavement Cafés - Amendment to Policy

1. Purpose of report

To seek approval to amend the Council's policy in respect of pavement cafés to extend its coverage to the whole of the Borough.

2. Recommendations

- 2.1 That the amended policy and guidelines for pavement cafés outside Barnsley Town Centre, as set out in Appendix 2 to the report, be approved;
- 2.2 That the inclusion of this function under Section 115 of the Highways Act 1980 within the terms of reference of the Planning Regulatory Board be noted, and the authorisation of the Executive Director, Development, Environment and Culture, to grant permission for provision, etc of services, amenities, recreation and refreshment facilities on highway under this provision be reaffirmed;
- 2.3 That the Executive Director process the application in respect of Linda's Café, 70 High Street, Wombwell, in accordance with the revised policy.

3. Introduction

- 3.1 The Council's policy on Pavement Cafés was approved by the then Highways and Transportation Committee on 12th January 1998 (Minute 1480 of 1997/98 refers), using powers under section 115 of the Highways Act 1980. The policy was established specifically to control premises in Barnsley Town Centre and 16 businesses, listed at appendix 1, currently hold licences. The arrangements ensure that pavement cafés can operate effectively without causing an obstruction to the footway.
- 3.2 Licences are approved by the Assistant Director Environmental Services (from 1st April, the Executive Director, Development, Environment and Culture) under delegated powers in accordance with guidelines developed since 1998. This includes arrangements to consult stakeholders in the area, including Local Members.

- 3.2 An application has now been received in respect of Linda's Café, 70 High Street, Wombwell and is under consideration. However, the policy established in 1998 does not extend to areas outside of Barnsley Town Centre.

4. Consideration of alternative approaches

- 4.1 There is no requirement for the Council to extend the policy to areas outside of Barnsley Town Centre, but there would be no effective means of permitting pavement cafés with adequate controls.

5. Proposal and justification

- 5.1 It is proposed that the Council adopt the amended guidelines at Appendix 2 in respect of applications for pavement café, which will extend the provision to areas outside of Barnsley Town Centre.
- 5.2 Regulations require that the power to grant permission for provision, etc of services, amenities, recreation and refreshment facilities on highway, and related powers under Section 115 of the Highways Act 1980 should not be a function of the Council's Executive. Currently this function is within the terms of reference of the Planning Regulatory Board, with relevant powers delegated to the Assistant Director Environmental Services. However, the amendment to what is therefore a regulatory policy requires full Council approval.

6. Implications for local people / service users

- 6.1 The amendment of the policy will allow additional amenities to be provided in areas outside of the Barnsley Town Centre, but ensure that these are properly controlled. Relevant local stakeholders, including local Elected Members, will be consulted when any individual applications are processed.

7. Financial implications

- 7.1 There are no specific financial implications arising from the amendment to the policy. The current fee for each new licence is £370, with an annual renewal fee of £202. This recovers the cost of the relevant processes followed in considering applications. Fees are reviewed each year to ensure that cost recovery is achieved.

8. Employee implications

- 8.1 There no specific employee implications arising from the amendment to the policy.

9. Communications implications

- 9.1 The processing of applications includes appropriate publicity in the local area. The Council's website sets out the arrangements for

pavement café licensing and will be up-dated once the amended policy is approved.

10. Consultations

10.1 The Director of Legal and Governance has been consulted on the proposed amendments to the policy and has given advice on the necessary approvals required.

11. Promoting equality & diversity and social inclusion

11.1 The current, and amended, policy and associated guidelines take into account the needs of people with physical or sensory impairment.

12. List of appendices

12.1 Appendix 1 – Premises currently with pavement café licences

12.2 Appendix 2 – Proposed amended policy and guidelines for premises outside of Barnsley Town Centre

13. Background papers

13.1 Minute 1480 (1997/98) of Highways and Transportation Committee on 12th January 1998

13.2 The Local Authorities (Functions and Responsibilities) (Amendment No. 3) (England) Regulations 2004

13.3 Current policy, guidelines and procedures

13.4 Background papers are available for inspection in Barnsley MBC Development, Environment and Culture, Westgate Plaza One, Barnsley, telephone (01226) 772015

Officer Contact: Paul Tiggardine, Tel: (01226) 772015, Date: March 2014

Financial Implications / Consultation
<i>(To be signed by senior Financial Services officer where no financial implications)</i>

Premises currently holding a Pavement Café in Barnsley Town Centre

Walkabout
Tillys Cafe
PJs Café
Lucorum
Pollyanna
Blah Bar
Soul Lounge
Silkstone Inn
Blackburns Cafe
Munjacks
Costa Coffee
Heart of Barnsley
Gary's Fisheries
Peel Square vendor
Aroma
Tequila Bar



BARNSLEY

Metropolitan Borough Council

GUIDELINES FOR STREET CAFÉS

**Areas outside of Barnsley Town
Centre**

Guidelines for Street Cafés

1. **Introduction**

- 1.1 This guidance is provided for existing and potential operators of premises selling food and drink who wish to use part of the public highway for outside seating for their customers. Such use requires a highway licence for a specific area. Within this guidance, such areas are referred to principally as 'the licensed area', but for understanding, occasional references are made to 'tables and chairs' or 'furniture'. Within this guidance, these terms are interchangeable.
- 1.2 Street Cafés can be a pleasant and attractive part of the life and character of the centre. However, if they are not carefully controlled, pedestrians can be inconvenienced or put in danger. People with impaired vision, in wheelchairs or with prams can be particularly disadvantaged. In some places, people eating or drinking outdoors may also be a cause of disturbance. The Council aims to strike a balance between these different concerns. This guidance explains how to make an application for a highways licence and the matters the Council will consider. It also outlines the conditions likely to be imposed by the Council should a licence be granted.
- 1.3 Potential operators are advised that an informal discussion with an officer in the Highways and Engineering Department would be worthwhile. (Telephone number and address are in the contacts list at the end of these Guidelines). Such discussions are likely to be helpful in explaining particular circumstances and avoiding abortive applications or ones that later have to be amended.
- 1.4 The Council's Environmental Health Officers can advise on the need for toilet accommodation and other matters relating to the Public Health.
- 1.5 Applicants should ensure that they comply with legislation regarding alcohol licensing. Applicants should contact the Licensing Section of Regulatory Services (BMBC).

Guidelines for Street Cafés

- 1.6 This guidance has been drafted in a way which simplifies the legal terminology. Where there are matters of dispute it will be necessary to refer directly to the legislation.

Guidelines for Street Cafés

2. Legislation

The Highways Licence

- 2.1 The Council, as Highway Authority, may licence the use of an area of the public highway for the positioning of tables and chairs under the provisions of the Highways Act 1980. In doing so, the Council must ensure that sufficient footway width is retained for pedestrians to move about safely.
- 2.2 The Council does not, in the majority of instances, own the public highway but exercises control over it in the interest of the public.
- 2.3 Under the provisions of the Highways Act, the Council can grant a licence over an area of highway if it receives the consent of those with an interest in the property. Applicants for licences do not have a right of appeal if their application is refused, except through the Courts.

Guidelines for Street Cafés

3. Assessing Applications

General Guidelines

- 3.1 A minimum width of 3 metres of footway must be retained for safe and convenient pedestrian movement in busy town and village centres and 2m on general highways outside these areas. This minimum allows wheelchairs and prams to pass comfortably and provides a reliable, safe route for blind and partially sighted pedestrians. However, additional width may be required in streets where there is a high level of pedestrian activity or permanent obstructions, such as street furniture. Extra care will be taken with proposals outside pubs, wine bars and café bars where extra standing customers may obstruct pedestrian movement.
- 3.2 A minimum distance of 0.74 metres from the face of a building is required to satisfactorily accommodate tables and chairs, plus seated persons. Tables and chairs will normally be restricted to areas adjacent to premises, at the back of the footway. The positioning of tables and chairs should never discourage pedestrians from using the footway; the available route past must be straight, obvious and unobstructed. Emergency access routes must be kept clear at all times.

Guidelines for Specific Areas

- 3.3 All applicants should be aware that the public highway is normally the location for Statutory Undertakers' services, gas, electricity, etc. There is every likelihood that such services will underlay licensed areas. At all times, these Undertakers shall have right of access to their equipment without the licensee having recourse to compensation.

Guidelines for Street Cafés

3.4 There are 2 types of location where applications for use of the highway will be considered:-

(i) Pedestrianised streets (with vehicular access at specified times)

A minimum width of 3 metres must remain free and unobstructed and maintain a direct route for pedestrian movement. This figure may be increased if there are high pedestrian flows at times when the tables and chairs are in place. The unobstructed route should fall equally either side of the centre line of the highway to ensure the space available is shared equally between opposite premises.

Tables and chairs will normally only be allowed outside the permitted hours of vehicular access. Even during the hours when vehicles are normally excluded, there may be instances where vehicles must use the highway – Statutory Undertakers, shop fitting, etc. On these occasions, operators (the licensee) will be required to allow such access.

The Council will try to ensure that available space is shared equally, but there will be occasions when areas will vary in the same street.

(ii) Streets with pavements and road

A minimum width of 3 metres measured from the edge of the road is required for pedestrians in town and villages and 2m on general highways outside these areas.. Where there is a significant amount of street furniture (such as lampposts, bollards, barriers etc.),3 metres is required from the line of the street furniture rather than the edge of the road. Where there are heavy pedestrian flows, for example close to pedestrian crossings, extra pavement space may be needed.

Guidelines for Street Cafés

- 3.5 Occasionally, South Yorkshire Police may advise the Council of security issues. In exceptional circumstances, a refusal may be justified on these grounds.
- 3.6 The Council will take particular care to ensure that the provision of tables and chairs on the highway will in no way adversely affect the setting of any listed building or Conservation Area. In such circumstances, the Council may require an applicant to submit fuller details.
- 3.7 Any alterations to, or extension of a building, will require a planning consent.
- 3.8 If there are residential uses close by, the Council will consider the effects of the proposal on these residents.
- 3.9 The Planning Acts do not allow any account to be taken of objections raised by other cafés or outlets in the area on the grounds of commercial competition.

Guidelines for Street Cafés

4. Procedures for Submitting and Determining Licensing Applications

- 4.1 An application for a licence will need to include all the relevant information set out below and in the diagram overleaf.
- 4.2 In addition to enable the Highways Act licence to be considered the applicant will also be responsible for supplying the names and addresses of the owner and any other parties with an interest in the property which fronts the area of the highway proposed to be licensed.
- 4.3 The application must make clear the area for which a licence and permission is sought not merely the numbers of tables and chairs proposed. Plans submitted with the applications must identify the location of the building line and kerbline adjacent to the proposal, and the opposite building line in a pedestrianised street, together with dimensions. The plans should also show any entrances to premises within or adjacent to this area; any area which is considered to be private forecourt and location of trees, lamp posts and other street furniture. An illustrative diagram is included overleaf. Applicants should also specify the hours of the day during which they would wish to use the area. Any application without such a detailed plan will not be dealt with until such a plan has been supplied.
- 4.4 The cost of the licence is £370 for the application followed by the current renewal fee of £202 per year.. A cheque should be included with the application made payable to BMBC.
- 4.5 The Council will place a Highways Act notice on site and consult the statutory undertakers. A copy of the notice will also be sent by the Council to people with an interest in the premises up to the middle of the highway. They will be advised that their consent is requested with or without conditions. Consent cannot be unreasonably withheld and if they intend to refuse consent, they must respond within 28 days. If there is no response it will be considered that consent has been unreasonably withheld.

Guidelines for Street Cafés

- 4.6 If consent is withheld the Council cannot proceed to grant a licence until the question of whether this refusal is reasonable, has been determined. In the absence of agreement the Act requires the appointment of an arbitrator. Similarly, if a consent is subject to conditions which are considered by the Council to be unreasonable, the matter must again be referred by the Council to arbitration. The applicant will be expected to defray any costs involved in this part of the procedure.

Guidelines for Street Cafés

5. If a Licence is Granted

- 5.1 The highway licence will run for a period of one year. The licence will refer to a specific area of the highway rather than a number of tables and chairs. The area will be subsequently marked out by the Council on the highway to indicate the area within which all furniture and activity must be contained.
- 5.2 Tables and chairs placed outside require extra care on the part of management and staff to ensure that amenities of the area and people are not adversely affected. Those who receive the necessary licence and consents are urged to discuss with the Council the type of furniture etc. which they intend to use. The Council will consider publishing further design guidance if necessary.
- 5.3 It will be the responsibility of the licensee to ensure that the conditions of the highways licence are adhered to. The Council will monitor the activity of licensees and will liaise with the police where necessary, to ensure that the licence is complied with. Where action is necessary, the Council will have the powers to secure compliance and recover any costs in so doing.
- 5.4 The licence will normally cover the following matters:-
- times of use
 - area of licence
 - responsibility for customers
 - responsibilities for cleansing
 - indemnity to the Highways Authority
 - public liability insurance
 - restriction on sound reproduction

Occasionally, other conditions may be added to the licence. A copy of the draft standard licence will be made available for applicants.

Guidelines for Street Cafés

6. Contacts

All completed applications should be sent to:-

Interim Assistant Director, Development, Environmental & Cultural Services,
BMBC,
PO Box 601
Barnsley
S70 9FA

Cheques should be made payable to Barnsley Metropolitan Borough Council.

General Enquiries

Environment & Development Directorate Reception.

Telephone: (01226) 772600

Licence Enquiries

Enquiries regarding Highways Licences:

Telephone: (01226) 772016

Environmental Health Enquiries

Enquiries regarding Environmental Health:

Telephone: (01226) 772468

Enquiries regarding Alcohol Licensing

Telephone: (01226) 772468

