

LICENSING COMMITTEE
(Non Licensing Act 2003 Functions)

Agenda Item 33

Brighton & Hove City Council

Subject: *Improvements to access on Public Highway Pavements (Highway Licensing)*

Date of Meeting: *24 April 2009*

Report of: *Director of Environment*

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Wards Affected: All

FOR GENERAL RELEASE

1. SUMMARY AND POLICY CONTEXT:

- 1.1 This report is the result of an ongoing review of the council's street licensing system. The review stems from concerns over the effect an increasing number of traders' items (advertising boards, tables and chairs etc.) is having on highway users, particularly disabled people.

Existing policies and procedures go some way to addressing these concerns, but a number of changes have been felt necessary to both meet present challenges and comply with the council's duties under legislation. Recent measures include the limiting of officers' discretionary use of delegated authority under the Highways Act 1980 and alterations to standard licence conditions.

This report submits certain measures for consideration, with a recommendation that they be adopted as city-wide policy.

It is believed that the recommendations will help improve access and safety for all highway users and better reflect the Department For Transport's Mobility Guidance and Disability Discrimination Act 1995 (DDA).

2. RECOMMENDATIONS:

That the Committee note the conditions at Appendix 3 and agree the following as policy in relation to traders' items placed upon the public highway.

- 2.1 That no licensed traders' items should be permitted to reduce the width of a footway to less than 1.3 metres except where:-

- a) a formal pedestrian zone has been established in a road by Traffic Order and the whole of the carriageway is kept clear for pedestrian use
 - b) a road is closed to vehicular traffic by virtue of a temporary Traffic Order and the whole of the carriageway is kept clear for pedestrian use
 - c) a road is considered to be “shared space” and the whole carriageway is generally available for pedestrian use
- 2.2 That where a footway is reduced to a width of 1.3 metres (or less) by objects (whether these objects be traders’ items or fixed street furniture such as lamp posts, bins etc.) “turning areas” for manual wheelchair users and guide dogs must be established at regular intervals. These “turning areas” shall not be less than two metres in length and shall be the full width of the footway. Such areas must be maintained at intervals of no more than six metres along the length of any restricted footway.
- 2.3 That, except in the case of items within large, waiter-serviced sitting-out areas, no traders’ item shall be permitted to be placed more than five metres from the licensed premises. All objects must be within sight from a window or door of said premises or in clear visual range of cctv camera(s) monitored from within the licensed premises. This provision will mainly affect advertising boards.
- 2.4 That where an application is refused by officers, an applicant may appeal to the Licensing Sub-Committee (The Licensing Panel).

3. RELEVANT BACKGROUND/CHRONOLOGY OF KEY EVENTS:

3.1 Officers believe that change is necessary if the council is to meet its legal obligations under the DDA. The measures outlined are based upon legal advice and DfT Guidance (see 5.2 below for legal Implications and **Appendix 1** for DfT pavement width guidance).

3.2 Chronology of Key Events:

This review is the culmination of a process of development of the Street Licensing System to meet changing circumstances, legislation, legal advice and the needs of service users.

Until 2009 officers’ delegated powers allowed them to issue licences for traders’ objects based upon their own discretion and DfT Guidelines.

In these circumstances, and in line with the policy for other placements by the public/businesses permitted by the council (such as domestic wheelie bins) officers could issue licences that allowed pavements to be restricted to the minimum width of 1metre as set in DfT Guidelines (note however that, in most cases, officer-generated licence conditions ensured that this minimum width was in fact exceeded).

Because of concerns over highway access, and following legal advice, the above officer discretion was reduced for licensing year 2009-2010, so that junior officers could no longer issue licences that would allow a narrowing of the pavement to less than 1.3 metres.

This report allows the Committee to consider the adoption of this 1.3m. minimum, plus the other measures above, as general policy. It is thought that adopting these measures would establish a fixed base-line from which officers can work when considering licence applications and which traders will find simple to understand. It is also believed that for Committee to adopt the measures as standard policy now would reduce the number of appeals to Committee/Panel that might otherwise arise.

The following is a summary of events. See **Appendix 2** for a more detailed chronology.

1997 - 2001: Licensing of traders' items largely limited to tables and chairs.

2001: Creation of specialist Highway Licensing Officer post.

2001 - 2003: Period of experimentation and consultation. Expansion of licensing scheme. Establishment of "Old Town" licensing zone, covering all traders' items.

2003: Setting up of Highway Enforcement Team to deal with licensing and enforcement. Expansion of licensing zones.

2005: Highway Enforcement Team produces "Street Clutter" Report and organises experimental, multi-agency joint-action operations in North Laine.

2007-2009: Expansion of licensing zones. Strategic system review recommended by officers, Scrutiny Panel & others.

3.3 **Considerations:**

The council is permitted to licence objects upon the public highway under the terms of the Highways Act 1980 and has a duty to fairly consider all applications made under said Act.

3.4 **Impact of the recommended measures:**

- 3.4.1 **General:** These measures will lead to clearer footways in narrow streets, improving access for all. They will also make enforcement easier for council staff and other agencies by providing clear, city-wide guidelines.

Clearer, city-wide rules would also clarify the licensing situation for interested members of the public and service user groups.

In conjunction with revised licence conditions (to be applicable from April 2009, see **Appendix 3**) the changes will also help simplify matters for licensees.

3.4.2 **Impact on traders: It is estimated that around 20% of existing licensed sites will either be unable to place items on the highway or will have their existing licensed areas reduced under the criteria.** Appendix 4 gives a rough breakdown of those roads in the centre of Brighton likely to be most affected.

3.4.3 **Impact on Council income:** The measures are likely to reduce income to the council by approx. £4,000.00 per annum. However, adopting the recommendations will slightly lessen the amount of time currently spent in administrating the system, freeing up staff to deal with other statutory duties, including enforcement of regulations.

4. CONSULTATION:

4.1 Federation of Disabled People, Brighton & Hove Older Peoples' Council, Rottingdean Parish Council, selected residents' & traders' associations and existing licensees were apprised of proposals and invited to comment (Dec. 08 to March 09).

The written responses received are contained within **Appendix 5**.

5. FINANCIAL AND OTHER IMPLICATIONS:

5.1 Financial Implications:

Revenue

It is estimated that a reduction in the number of permissible sites in the City will reduce income to the Highway Licensing System by approximately £4,000 per annum. There are no other known financial implications.

Capital

There are no known capital implications.

Finance Officer Consulted: Karen Brookshaw Date: 16/01/09

5.2 Legal Implications:

Section 130 of the Highways Act 1980 imposes a duty on highway authorities to assert and protect the rights of the public to the use and enjoyment of the highway. This duty will include a duty to prevent, as far as possible, the obstruction of highways.

However, Part VIIA of the Highways Act (sections 115A – 115K) allows highway authorities carry out works or place objects on the highway, or permit others to do so, for purposes of enhancing the amenity of the highway and its immediate surroundings, or of providing a service for the benefit of the public or a section of the public. It is under s115E that the Council is empowered to grant licences for the placing of A boards in the highway provided the consent of the relevant frontagers has been obtained.

By virtue of section 21B (1) of the Disability Discrimination Act 1995 (“the DDA”) it is unlawful for a public authority to discriminate against a disabled person in carrying out its functions. For the purposes of s21(B) (1) a public authority discriminates against a disabled person if, for a reason which relates to his or her disability, it treats a person less favourably than it treats or would treat others to whom that reason does not apply and cannot show that the treatment is justified in certain prescribed circumstances.

The licensing of A boards is a Council function under section 21B and a potential claim of discrimination could arise. Moreover, under section 21(E) of the DDA, where a public authority has a practice, policy or procedure which makes it impossible or unreasonably difficult for disabled persons to receive any benefit that is or may be conferred; or is unreasonably adverse for disabled persons to experience being subjected to any detriment to which a person is or may be subjected – the authority has the duty to take steps as reasonable in all the circumstances of the case to change the policy, practice or procedure so that it no longer has that effect.

Section 49A of the DDA imposes a general duty on the Council as a public body to (inter alia) eliminate discrimination that is unlawful under the Act and to promote equality of opportunity between disabled persons and other persons.

The recommended changes to the Council’s licensing policies have taken into account the above legislation and it is considered that, if adopted, the new policies will enable the Council better to comply with its duties under the same.

The Council is also obliged to publish a Disability Equality Scheme. The Department of Transport produced Guidelines in November 2002 which although they do not have legal status do set out established best practice. These provide minimum widths to allow people to move down passageways [**Appendix 1 refers**].

Legal Officer Consulted: Hilary Woodward Date: 02/04/09

5.3 Equalities Implications:

The recommendations are changes to existing highway policy and will better reflect the council's Disability Equality Scheme, DfT mobility guidelines and duties under of the DDA than existing measures. An equalities impact assessment has been carried out (see **Appendix 6**).

5.4 Sustainability Implications:

There are no significant implications.

5.5 Crime and Disorder Implications:

There are no significant implications.

5.6 Risk and Opportunity Management Implications:

There are no significant implications.

5.7 Corporate/City Wide Implications:

Surveys indicate that up to 20% of existing licensed sites will be affected by the new provisions. Most of the businesses affected will be small, sole traders in those parts of the city centre subject to highest rates and rents. This could have economic implications for the city, but it is felt by officers that the needs of mobility and visually impaired people and the council's legal obligations must prevail over these concerns.

SUPPORTING DOCUMENTATION

Appendices:

1. Department for Transport pavement width guidelines.
2. Detailed chronology of events.
3. Standard licence conditions (to apply to standard licences from 1st. April 2009).
4. Roads most affected by the measures.
5. Comments from consulted parties.
6. Equalities Impact Assessment.

Documents in Members' Room:

1. Appendices 5 to 6.

Background Documents:

1. N/A.