

# Highways Café Policy

## 1. Policy Vision

- 1.1. To support the potential for the use of the highway for trade by placing tables and chairs on the highway whilst minimising the disruption of its use for transport purposes.

## 2. Link to other policies

- 2.1. This policy should be read in conjunction with the Highway Obstructions Policy, 2012 (DRAFT)

## 3. Issues

- 3.1. Stockport town centre and the surrounding district and local centres are very important to the local economy. The Council works closely with local businesses and retailers through a wide range of measures and day-to-day support to help ensure that these centres retain their on-going viability, vitality and become more attractive and welcoming. As part of this the Council recognises the positive effects chairs and tables on the highway can have for cafes and other food outlets.

- 3.2. There is an increased presence of café seating and tables on the highway not only in the town centre but also in the rest of the borough. This increase may, in part, be related to the smoking ban and the desire to offer facilities to smokers. This expansion increases the risk that inappropriately placed café seating and tables on the highway will cause a problem to pedestrians, particularly the visually impaired, those with prams or buggies, and wheelchair users. The presence of on-street seating in relation to public houses may also have an impact in terms of increasing the potential for anti-social behaviour on the street.

- 3.3. Stockport Council, in consultation with key stakeholders and local businesses has therefore produced this policy and related guidelines to:

- support and guide those wishing to establish and/ or operate a pavement café in an appropriate area
- highlight the requirements and standards expected of pavement café operations, and
- reduce the number of obstruction to the highways and control the impact they have on pedestrian safety and convenience.

- 3.4. In order to do this we intend to use the following legislation<sup>1</sup>.

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<sup>1</sup> This document is not a definitive guide to these Acts and Regulations and for detailed knowledge the full documents should be used.

### **3.4.1. Highways Act 1980**

3.4.2. Under Section 115(a-k) of the Highways Act 1980 (hereafter referred to as HA80), tables and chairs on the highway require approval under licence from the highway authority. Under Section 149(2) of the HA80, a highway authority has the power to immediately remove from a highway pavement anything which it reasonably considers constitutes a danger to highway users and ought to be removed without delay. It can also recover the costs of doing so. Under Section 137 of the same Act, a highway authority can prosecute any person who obstructs the free passage of the highway pavement.

3.5. What is deemed acceptable in these conditions is not designed to be applied to other forms of potential obstructions.

3.6. This policy does not relate to the provision of smoking areas. To be defined as a highway café for the purposes of this policy the users of this area must be sat down to consume food and/or drink from the relevant business. The planning service should be contacted regarding provision for smokers.

3.7. This policy does not apply to privately owned land including privately maintained frontages. Other regulations may apply and advice should be sought from the planning service.

## **4. Background**

4.1. The review of the Council's current Street Café Design Guide (which has now been operating for over four years) found that over this period consumer trends have altered. Businesses and their customers have also had to adjust to a number of economic and legislative changes, notably the introduction of the smoking ban which has led to a marked increase in the number of premises using public and private spaces for patrons to drink, smoke, eat and socialise.

4.2. The majority of pavement café's under the current system have neither planning permission nor a current Highway Amenity Licence. A number of factors appear to be the cause of this including the cost, the over complicated nature of the application process and a lack of enforcement. Some business owners may also be aware that if they formally apply for permission it will be refused (e.g. due to a narrow pavement width at the location).

4.3. It has therefore been decided that a simplified system is needed, moving from a system where planning permission is required to one where the permission for a café on the highway will be considered as a highway issue.

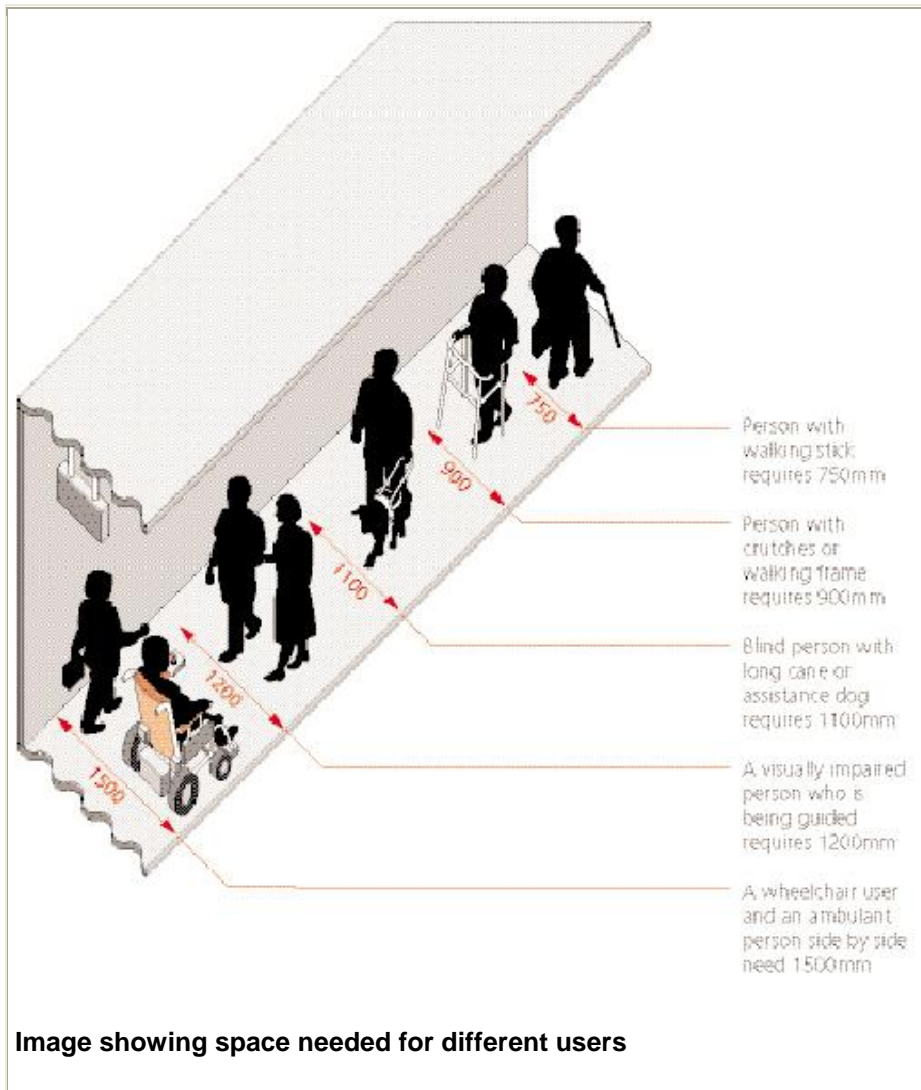
4.4. Planning permission has been required for the change of use of land from highway land to outdoor café. Bearing in mind that the use is not everyday, (less likely to be used in winter months and poor weather),

and only occupied for café use over part of the day, the change of use is regarded as `de minimus`. In addition, the control over the development via a single licence will adequately protect amenity of pedestrians and other users.

4.5. Once permission has been granted, some premises do not comply with the design guidance; this can be seen with particular reference to the requirement of a suitable enclosure. There are also cases where the furniture quality requirements are not met by all cafes

4.6. The Equality Act Section 20 (4) requires that where a physical feature puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage Therefore this policy takes steps to ensure that café seating on the highway are not allowed where they result in a footway, which would otherwise meet the needs of a user, being impassable or causing hazards to the blind and visually impaired through the non-application of design guidance.

4.7. The minimum needs of people in regards to usable footway space are:



4.8. Therefore it is considered that **1.5 metres is the minimum acceptable space** which needs to be left clear on the footway. Where pedestrian numbers are high then more space will be needed.

4.9. To protect the blind and visually impaired from risks the following guidelines on protective barriers should be used for the production of enclosures.



Image of 1 metre high barrier with tap rail 50mm from ground.

## 5. Objectives

- Work with traders to undertake their businesses in a way which improves the streetscape and economic vitality of the borough and allows pedestrians to move freely through a clear, obstacle-free network of streets.
- Ensure the safe and free movement of pedestrians especially people who are visually impaired and people with disabilities.
- Ensure that the powers contained within HA80 are applied fairly and consistently, and in the public interest.

## 6. Policy Principles

6.1. In order to achieve these objectives the Council will:

- Issue licences outlining clear requirements and restrictions for the placement of café furniture and equipment on the highway<sup>2</sup>.
- Only issue licences in situations where it can be ensured that there is enough space available to incorporate the requested café furniture and equipment while maintaining suitable access along the footway for the public and that they will not cause undue distraction to any passing traffic.
- Ensure that café furniture and equipment which is not licenced is removed from the footway using the terms identified in the council's highway obstructions policy.
- Ensure that where the terms and conditions of the licence are not kept that issues are addressed and that in situations where contravention persists that the licence is revoked. A three strikes and you're out approach will be implemented. This would be in the

<sup>2</sup> See Appendix 1 for detailed guidance on the placement of café furniture.

form of three written warnings to the business regarding failure to comply within the period of the licence.

- Deal with licence applications/ renewals within eight weeks of receipt.
- Take account of changes in circumstance that may make café furniture more or less acceptable in a particular location and act in the public interest. This could include changes in the road layout which mean there would no longer be space to have café furniture on the highway.
- Ensure that the café management has considered the risks inherent in the running of a café on street and has a relevant risk assessment.

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## 7. Charges

7.1. In order to finance the issuing of licences and the monitoring of café furniture and equipment on the highway, licence fees will be applied. . The two types of licence fee will be:

- An initial licence application - (this will also be applicable where the layout of the café is to be amended)
- A renewal licence application

7.2. A fee will also be charged for the change of ownership on the licence.

7.3. Fees will be reviewed annually and published on the Council's current Schedule Of Charges'.

7.4. Payment will be expected with the application, but will be returned in the event that a licence cannot be issued for the location requested. Please read guidance carefully to avoid disappointment.

7.5. It is the licensee's responsibility to ensure that their licence is up-to-date and renew as required.

7.6. The licensee is also **responsible for obtaining any other licences or approvals necessary** for the utilisation proposed.

## 8. Consultation

8.1. As part of the application process the council will consult the following groups:

**Stockport Council:**

Town Centre Management  
Traffic Services  
Planning  
Public Realm Services  
Licensing

**Other agencies:**

Greater Manchester Police

**Other stakeholders:**

## Nearby Businesses/organisations tenants & landlords

8.2. In order to reduce conflict the Council recommend consulting with neighbouring businesses and homes with regards to the placement of café furniture before application is made. If a satisfactory agreement cannot be reached between the parties involved then the Council may refuse to issue or revoke a licence for that activity.

### **9. Appeals**

9.1. Appeals against decisions will be looked at by the appropriate Council Committee.

### **10. Targets**

10.1. All café furniture and equipment on the highway will be licenced by the Council.

### **11. Monitoring**

The following will be monitored annually:

- Number of licences issued.
- Number of non-compliance letters issued to licensees
- Number of times non-licenced café furniture needs to be removed.

### **12. Implementation timescale**

12.1. All businesses placing café furniture on the highway will be given 3 months from the implementation of the policy to apply for a licence using the relevant council application form, after which non-licenced café furniture will be treated in line with the obstructions policy.

12.2. Businesses will be encouraged to apply for their licence early to allow the council time to process requests. . All licences will commence on the first day on which the policy comes into effect, for the period of 12 months. Businesses will not be authorised to put furniture on the highway until the date specified on the licence.

12.3. Those cafes that have had permission issued to them under the old policy within the last 3 years, and so have current valid Highways Amenity Licence, will be issued a permit to replace their current highways amenities licence free of charge on application to Engineering Services. These cafes should then apply for a licence renewal in line with the new scheme every 12 months, assuming no changes to layout have been made. As current permissions cease to be applicable either with the expiry of the original permissions under the old system or through changes in layout to the café area then these cafes will be moved in to the new payment system.

## 13. Terms

**Footway** - that part of the highway over which there is a right of passage for pedestrians

**Carriageway** - that part of the highway over which there is a right of passage for motor vehicles

**Highway** - the carriageway, footway and verge over which the public has a right of access and is maintained at the public's expense.

**Street furniture** - pieces of equipment, such as streetlights, bins and benches, placed in the street for the benefit of the public

**Tactile paving** - textured ground surface found on footways to assist blind and visually-impaired pedestrians

**Café furniture** – Any tables, benches, stools and chairs related to the serving and consumption of food in relation to a specific business or group of businesses.

**Café Equipment** – Menu boards, planters, signs, umbrellas/sunshades or other equipment as placed within the licenced area to assist the business. This excludes cooking equipment which will not be permitted on the highway.

**Barriers** – Protective barriers forming an enclosure to contain café furniture and equipment.

## 14. Contacts

### **General information**

Town, District & Local Centres Management: Graeme Vout

E: [graeme.vout@stockport.gov.uk](mailto:graeme.vout@stockport.gov.uk)

T: 0161 474 4562

Web address – [www.stockport.gov.uk/towncentremangement](http://www.stockport.gov.uk/towncentremangement)

### **Planning Services - Development Management** (for planning applications)

T: (0161) 474 3541 or (0161) 474 3569

E: [planning.dc@stockport.gov.uk](mailto:planning.dc@stockport.gov.uk)

**Web address -**

[www.stockport.gov.uk/services/environment/planningbuildingplanningpolicy/developmentmanagement](http://www.stockport.gov.uk/services/environment/planningbuildingplanningpolicy/developmentmanagement)

### **Building Regulations - Building Control** (for building regulation applications)

T: (0161) 474 3658 / 3571 or 3575

E: [building.bc@stockport.gov.uk](mailto:building.bc@stockport.gov.uk)

**Web address -**

[www.stockport.gov.uk/services/environment/planningbuildingplanningpolicy/buildingregulation](http://www.stockport.gov.uk/services/environment/planningbuildingplanningpolicy/buildingregulation)

### **Conservation Advice**

T: (0161) 474 4561 or (0161) 474 2620

E: [fiona.albarracin@stockport.gov.uk](mailto:fiona.albarracin@stockport.gov.uk)

Web address – [www.stockport.gov.uk/historicareas](http://www.stockport.gov.uk/historicareas)



## **Traffic Services**

Engineering Services

Floor 1, Fred Perry House, Stockport. SK1 3XE

E: [traffic.services@stockport.gov.uk](mailto:traffic.services@stockport.gov.uk) T: 0161 474 4872 F: 0161 474 4833

## **Licensing Team**

Environmental Health and Trading Standards

Stopford House, Piccadilly, Stockport. SK1 3XE

E: [licensing@stockport.gov.uk](mailto:licensing@stockport.gov.uk) T: 0161 474 4311 F: 0161 474 4369

Appendix 1 – Controls Regarding the Placement of Café Furniture on the Highway - (these controls do not apply on forecourts which are maintained at the cost of the owner or occupier of the business though other controls may apply.)

### **Furniture, Barriers, and Equipment Type**

- All café furniture on the pavement must be enclosed by barriers.
- Barriers must be continuous (excluding designated point of entrance) between 1000mm and 1200mm high and have a tapping rail no more than 50mm from the ground which is at least 150mm deep for use by long stick users. Ropes will not fulfil this purpose.
- All furniture, barriers, and equipment must be of a quality construction and uniform style. Plastic garden furniture/ picnic tables will not be permitted.
- All furniture, barriers, and equipment must contrast with the background to assist the visually impaired. For example: A black barrier will contrast on a light background.
- All furniture, barriers, and equipment must be sympathetic to the local area, in conservation areas the conservation officer must give approval of the proposed design.
- All furniture, barriers, and equipment must have no protruding elements or sharp edges that could cause passers-by to trip or fall, or that could cause other injury or damage.
- All furniture, barriers, and equipment must be stable and not represent a potential danger to any highway users. In particular, the structure must be of sufficient weight or design to prevent it being blown over in the wind.
- Parasols/umbrellas need to be high enough (minimum 2.1m) not to injure pedestrians and should not overhang the highway beyond the licenced area. They must be of a non-reflective fabric and logos on them must not exceed 450mm by 150mm in size. They must also not interfere with sight lines for the highway or the visibility of traffic signage.
- Awnings must be a minimum of 2.6m high and 0.6m from the kerbline.

- The council accepts no liability in regards to furniture, barriers, and equipment being lost, stolen or damaged in any way.

### **Café Furniture Positioning**

- Café furniture and equipment must be placed at the back of the footway in line with the outside wall of the business it is related to, wherever possible. Where space does not allow this other locations could be permitted if permission can be obtained from other relevant businesses. These will be a reviewed on a case by case basis but additional conditions may be required as necessary to mitigate the particular safety issues which may arise. Examples of this could include: the need for a member of staff in the seating area at all times or the need for staff to take beverages out to the area for customers.
- Café furniture and equipment must be positioned on the pavement consistently on a day to day basis.
- Café furniture and equipment must not be placed where it obstructs visibility for pedestrians and drivers, (e.g. at the corner of a building).
- Café furniture and equipment must not reduce the usable width of the footway below 1.5 metres in low usage areas, or below 3.5 metres in pedestrianised areas. This is to allow access for emergency vehicles. In areas with heavier usage more clearance may be necessary and the Council may deny a licence on these grounds.
- The café seating area must not be within 1.8 metres of a piece of street furniture (Inc. bus stops, bins and cycle parking), or any tactile paving outside of the café area. The Council may increase this distance in areas with heavier usage for example bus stops on major bus routes. Where appropriate cafes may be set up surrounding certain types of street furniture (such as trees, bollards or streetlights) where this will not conflict with their usage / benefits to the public at large. This will not be allowed where it would affect the usage of the street furniture (e.g. bins, seating, bike parking etc.). It may be possible to move certain small pieces of street furniture (e.g. bins) in order to allow cafes where the business is able to pay for that work to be done and an alternative location is available.
- Café Furniture and Equipment must be removed prior to and during events likely to result in a significant increase in the level of footfall which would make them a potential danger to the public. (e.g. protest marches and similar public events). Licensees must not allow queues or crowds to gather so to cause a nuisance, annoyance or danger to people using the highway.
- No café furniture or equipment will be allowed on, shared use paths, roundabouts, road safety refuges and central reservations. Café Furniture and Equipment must not block emergency exits.

### **Environmental Requirements**

- The licence holder must keep the licenced area clear of litter during the operating period and clean the area at the end of each period of use.

- The licence holder must take reasonable steps to minimise and remove any litter generated by the presence of their café in the immediate vicinity of their licenced area. For example litter blown out of the licenced area by the wind should be collected by the licence holder and steps to minimise this happening should also be taken.
- Waste must be disposed of via facilities provided by the café and not in Council provided highway litter bins.
- All licence holders must meet all other relevant licencing requirements to the operation of their business.
- All licence holders must meet relevant food safety standards.
- All licence holders must meet relevant sanitary requirements in relation to their main premises.
- Smoking is legally allowed in licenced café areas on the highway. Licences holders retain the right to designate areas of the licenced area as no smoking and it is their responsibility to manage such designations.
- The licenced area must be used solely for the purpose of consuming refreshments and not for any other purpose whatsoever.
- The licence does not allow for any music playing, music reproduction or sound amplification apparatus or any musical instruments, radio or television receiving sets.

### **Other requirements**

- All furniture, equipment and barriers must be temporary and not fixed in nature. Chaining furniture, barriers and equipment to street furniture is prohibited.
- Broken and damaged furniture, barriers and equipment must be removed from the highway.
- The licence for furniture, barriers and equipment must be displayed clearly in the window of the premises to which the furniture, barriers and equipment belongs.
- Furniture, barriers and equipment must be removed from the highway when adverse weather conditions may make them a danger to the public, e.g. high winds, fog, or snow.
- Furniture, barriers and equipment may only be on the highway during hours stipulated on the licence. These agreed times must never be beyond the trading times of the business and in the case of time limited pedestrian controls will start after the pedestrian controls come in to effect and end before the area is reopened to traffic to ensure that the highway is clear for traffic. Furniture, barriers and equipment must not contain any visual or written material that could be construed as being racist, sexist, homophobic or insulting.
- Business must provide evidence of liability insurance to the value of 5 million pounds to indemnify the Council against all actions, proceedings, costs, claims or demands whatsoever in respect of any injury or damage arising from the siting of the furniture, barriers and equipment.

- Furniture, barriers and equipment must be easily removed in the event of an emergency.
- Where a business has its own private forecourt adjacent to the highway which is maintained by the owner or occupier of the premises, any furniture, barriers and equipment shall be placed wholly within this forecourt and highway licences for café furniture, barriers and equipment will be issued for these premises only in exceptional circumstances on a case by case basis.
- Furniture, barriers and equipment must be removed if requested for maintenance of the highway, including cleansing, or utilities under the highway.
- No selling or trading will be permitted upon the highway. All transactions must take place within the trading establishment.
- No cooking equipment may be used on the highway.
- All changes to the operation of the licenced area, including the named operator, must be agreed with the Council in writing. The Council will charge for any changes in line with the current Schedule Of Charges. Subletting of the space is not allowed.
- Licences, even if applied for via an agent, will only be granted to a named individual in respect of the main premises with which the pavement café area is associated.
- If permission is revoked, no compensation from the Council will be due in respects to the revocation.

Conditions are non-negotiable, and failure to meet them will result in the removal of the furniture, barriers and equipment and / or of permission to use furniture, barriers and equipment on the highway. The Council will apply a “three strikes and you’re out” approach to non-compliance during the life of the licence after which licences will be revoked and items after this will be dealt with under the Councils Highway Obstructions Policy.