



Walsall Council

LICENSING AND SAFETY COMMITTEE

9TH SEPTEMBER 2009

REPORT OF THE HEAD OF PUBLIC PROTECTION

STREET TRADING REVIEW – REPORT 1

CRITERIA FOR SHOP DISPLAYS AND ADVERTISEMENTS ON THE HIGHWAY

1.0 PURPOSE OF REPORT

- 1.1 To provide, through licensing provisions, a policy for street activity that seeks to enhance the character and vibrancy of Walsall generally and in particular Walsall's district centres
- 1.2 This report is one of a series that identifies issues that were previously placed before the Licensing and Safety Committee in a combined report, 'Street Trading Review – Stage 2', on 10th September 2008. The report was recommended by Licensing and Safety Committee for approval by Council on 3rd November 2008. It was considered however, that the wording within the report could have been clearer, and the report was withdrawn for clarification of the recommendations.
- 1.3 Since then there have been other legal considerations to take into account and the effect of the European Services Directive on the Street Trading Policy. Those have been considered and are reflected in these reports together with any amendments proposed at Licensing and Safety Committee on 10th September 2008.

2.0 RECOMMENDATIONS

- 2.1 Licensing & Safety Committee is asked to consider the report and recommend for approval by Council together with suggested amendments,
 - a) the fees outlined at **Appendix 1**
 - b) the criteria for shop displays as detailed at **Appendix 2.**
 - c) the criteria for licensed advertisements on the highway as detailed at **Appendix 4**
 - d) that a further three month consultation period be undertaken prior to final approval by Council and implementation from 1st April 2010.

2.2 Licensing and Safety Committee is asked to consider the report and recommend the following delegation for approval by Council:

i) that the Licensing and Safety Committee determine licensing applications when representations are received and not subsequently withdrawn.

3.0 FINANCIAL IMPLICATIONS

3.1 Financial implications and suggestions are laid out in **Appendix 1**.

4.0 POLICY IMPLICATIONS

4.1 Accords with council strategic policy to encourage growth and development of the retail, service and leisure sectors both to strengthen and diversify the Borough's economy and to meet the needs and aspirations of all sections of the community.

4.2 Accords with council strategic policy to sustain and enhance the vitality and viability of the Town, District and Local Centres, and to assist these centres to meet the needs of residents, workers and visitors.

4.3 Accords with council strategic policy to maintain and enhance our established town, district and local centres as the main focus for shopping, services, leisure and most aspects of community life.

4.4 Introduces new Council policy on licensing of pavement shop displays and advertisements.

5.0 LEGAL IMPLICATIONS

5.1 Legal Services have been consulted before recommending any changes to Licensing and Safety Committee.

5.2 There are a number of provisions under the Highways Act 1980 dealing with obstruction of the highway. Section 137 creates an offence of wilfully obstructing free passage along a highway. This is punishable with a fine of up to £1000. Under Section 161 of the Act it is an offence to deposit anything on the highway as a consequence of which a user of the highway is injured or endangered. This is punishable with a fine of up to £1000. Section 130 of The Act imposes a duty on the Highway Authority, to protect the highway from unauthorised obstruction.

5.3 By virtue of Section 115 (e) Walsall Council as a Highway Authority may issue a licence for goods to be displayed on the public highway. Notices must be displayed at or near the position to which the proposal relates. The permission cannot be granted until the Council has considered all the representations made. Consents must be sought from those with an interest in the land and the highway authority and the local planning authority must be consulted.

- 5.4 An “A” board is an advertisement for the purposes of the Town and Country Planning Act 1990 and the Town and Country Planning (Control of Advertisements) Regulations 2007, and requires the consent of the Council under those powers. Displays on the highway, when they involve a permanent or semi-permanent structure, e.g. a display rack, would also need planning permission. In either case a formal application needs to be made, and there is a fee (defined by statute), as with any other planning application. This licensing arrangement can not exempt anyone from these legal requirements.

6.0 EQUAL OPPORTUNITIES IMPLICATIONS

- 6.1 As part of the consultation process various groups representing disabled people were contacted for their views. We received very positive comments from the Royal National Institute for the Blind with respect to our proposals considering the obvious hazards that pavement obstructions such as “A” boards and shop displays present to people with restricted vision.
- 6.2 Any licensing applications received will be treated in accordance with Walsall Council’s Equal Opportunities policy and where applicable representative disability groups will be part of the new consultation regime.
- 6.3 The Street Trading Review is the subject of an Equality Impact Assessment.

7.0 WARDS AFFECTED

- 7.1 All.

8.0 CONSULTEES

- 8.1 Extensive consultation was undertaken in the first phase of the review to obtain general views from across the Borough as to what people from different backgrounds thought the street trading scene should be like. The results showed a level of interest and support for increasing the variety of permitted street activities in the District Centres as well as Walsall Town Centre.
- 8.2 The first stage of the Review was reported to Licensing and Safety Committee on 19th March 2008 when it was resolved, amongst other things, that approval in principle be given to the following
- i. the criteria for licensed advertisements on the highway
 - ii. that the implementation timetable detailed in paragraph 10 on page 10 of the report be approved subject to the report being submitted to Development Control Committee on the 22nd April 2008
 - iii. that the report be submitted for consideration by all Local Neighbourhood Partnerships.
- 8.3 The report of 19th March 2008 was submitted to Development Control Committee on 22nd April 2008. Members resolved that the report be noted and that members direct any detailed issues to the Trading Standards Manager.

During the course of that meeting it was requested specifically that Willenhall Traders Association be included in any further consultation.

- 8.4 A report was submitted for consideration by the Local Neighbourhood Partnerships at their cycle of meetings in June, July and August 2008. Officers from the Licensing unit attended the meetings to answer any questions and to take away any initial comments. Contact details were left so that any further comments could be forwarded directly to the licensing unit.
- 8.5 Other identifiable stakeholders were consulted by direct contact.
- 8.6 Extensive consultation was also undertaken in the second phase of the review to obtain comment on the proposals formulated from the first stage.
- 8.7 A list of consultees and a summary of the representations together with our response and subsequent action is available for inspection from Licensing Services. This also includes the results of the consultation at Stage 1. All of these consultations were all detailed and reported to Licensing and Safety Committee in the report of the 10th September 2008 Street Trading Review Stage 2.

9.0 BACKGROUND

- 9.1 **Pavement Shop Displays and Advertisements (Illustrated at Appendices 3 and 5).** It is important to recognise that this report and the arrangements set out do not apply to displays or adverts on the forecourts of shops or other premises, as these are not on the highway. A pattern of extended shop displays and pavement advertisements is evident, on the highway, throughout the borough. Many are a nuisance, creating a hazard for people with disabilities and carers with pushchairs or buggies and detracting from the street scene. Presently, all shop displays and pavement advertisements on the highway are unauthorised on the highway. The proprietor is committing an offence which is punishable in the Magistrates Court. Enforcement by the Council involves a legal procedure leading eventually to prosecution, and in the event of a secured conviction the fine can be up to £1000 to the continuing offender. However, the Council may not be successful in securing a conviction at locations such as pedestrianised areas, or in situations where the obstruction leaves at least 1.8 metres of footway for free passage (the minimum width for safe use by pedestrians passing in two directions).
- 9.2 Historically, a policy, which was approved by the Highways Committee in 1991, allowed a tolerance towards shops displaying their goods on the highway at some locations, however this was clearly not a licence or an authorisation. In 2004 consultation with our legal department revealed this policy was not considered fully compliant with the Council's duty as imposed by The Highways Act.
- 9.3 Consequently, at the Council meeting of 8th November 2004 the policy was reconsidered and approval was given to enforce an interim policy before reporting back to Council with a permanent policy. The interim policy carries a

zero tolerance - that is, tolerating no obstructions on the highway. Despite this, however, there have been various views expressed that extended shop display and pavement advertisements provide a more interesting and vibrant street environment in suitable locations. In order that we achieve our aims in line with the Council's Vision 2008 whilst working within the Enforcement Concordat, and also in accordance with the Highways Act, we should consider the option of authorising selected shop displays and pavement advertisements. It is being proposed that the council approve designated shop displays and pavement advertisements on the public highway within the Borough, whilst also allowing the impact of such features to be regulated and their effects on the public to be minimised.

- 9.4 Proprietors who infringe any conditions of their permit would have their permit revoked, the display or advertisement would return to 'unauthorised' status and enforcement would then be pursued in accordance with the Highways Act. Additionally, any display or advertisement for which either a licence had been refused, or no application submitted, would remain an unauthorised obstruction and therefore enforcement procedures would apply. The proposed regulations for trade displays are attached as **Appendix 2** and pavement advertisements as **Appendix 4**.
- 9.5 Within the second phase consultation the Society for the Blind accepted that improvements need to be made to the Walsall area but requested that they be notified of any changes in fixtures before erected so that the information can be circulated to clients in advance of changes to their local environment. It is suggested that these concerns could be addressed by including consultation with the Society for the Blind in the application process.
- 9.6 Through consultation with Local Neighbourhood Partnerships the possibility of other representative groups for the disabled needing to be involved was recognised and therefore it is proposed to include such groups as consultees in the application process for street activity consents.
- 9.7 Also within the second phase consultation it was highlighted that the proposed indemnity insurance for "A" Boards was £10,000,000 whereas for Shop Displays it was £5,000,000. The indemnity insurance for pavement café licences is set at £5,000,000. It is proposed that indemnity insurance for all street activity permissions be set at £5,000,000 for the sake of consistency since the differential appears arbitrary.

10.0 CONTACT OFFICER

John Beavon – Trading Standards Manager ext 2214

List of Attachments

Appendix No.

1. Finance scheme
2. Proposed regulations of trade displays
3. Illustrations of Shop Displays
4. Proposed regulations for Street Advertisements "A Boards"
5. Illustrations of "A" Boards

|

Finance scheme

1. Street Trading Sites.

Shop Pavement Displays and Advertisements

Under the Highways Act 1980, Walsall Council is entitled to charge reasonable costs for the administration of the licensing system and so has based fees on the estimated resources required to administer not only the application process but also to ensure compliance with conditions by site inspections and if necessary by enforcement action.

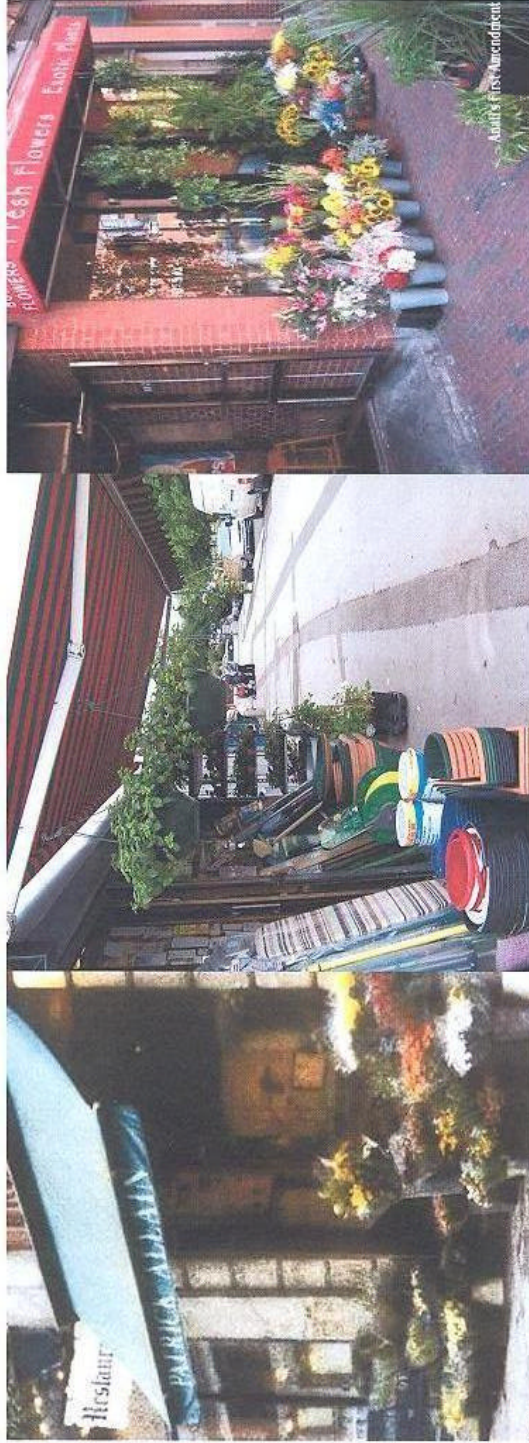
It is proposed that the annual fee for a shop display licence be £150.00 + VAT and a charge of £25 + VAT for a pavement advertisement licence, both renewable annually. This figure is low in consideration of the poor economic times and therefore requires review within six months due to the Council's budget constraints.

Proposed regulations for Trade Displays (illustrated at Appendix 3):

- All displays must be stable **safe and not present any danger to the public*** (**TO BE ADDED**) must not extend further than 0.5 metres from the shop frontage (unless the Highway Authority grants an exception) and must not be more than 1 metre high. Additionally, in all cases, at least 1.8 metres of clear pedestrian passageway is to be maintained.
- Any trade display must consist of goods and materials which are not liable to be moved by external forces, such as the effects of the wind or from being lightly knocked.
- Trade displays must not be erected before 7.00am and must be removed by 8.00pm. (unless there are traffic regulation orders in place which specify alternative times).
- In all cases, displays are the sole responsibility of the individual business and the Council insists that third party public liability insurance be taken out to a minimum indemnity of £5,000,000.
- In no cases must displays lead to excavations or damage of any kind to be made to the highway.
- In no circumstances should any trade display interfere with required vision lines for traffic and or pedestrians.
- ***In no circumstances should trade displays involve furniture, rolls of carpets or other flooring material, hardware / tools, electrical items or equipment / domestic appliances, or rails of clothes., building materials, bags / sacks containing vegetables or crates and trolleys.* (TO BE DELETED)***
- Goods on the highway are for display purposes only and items must not be sold from the highway.
- ***Applications for Walsall Town Centre would not be accepted under any circumstances.* (TO BE DELETED)***

***As amended at Licensing and Safety Committee meeting 10th September 2009.**

ILLUSTRATIONS OF SHOP DISPLAYS



Proposed regulations for Street Advertisements “A Boards” (illustrated at Appendix 5)

- Each shop or business should only display one A-board and all advertisements should be professionally presented and relate to the normal business carried out on the premises.
- Boards used must be of sound construction and, when extended, must not be higher than 1 metre and must not be wider than 600mm.
- The content of any text or images on any board should not be considered by Walsall Council to be offensive, indecent or defamatory.
- All boards must be located immediately adjacent to the building line and must not form an impediment to the public, especially those who may be blind or partially sighted.
- Under no circumstances should boards be located closer than 450mm to the main carriageway and, in all cases, at least 1.8 metres of clear pedestrian passageway is to be maintained.
- Boards must not be placed out before 7.00am and must be removed by 8.00pm.
- In all cases, boards are the sole responsibility of the individual business and the Council insist that Third Party public liability insurance be taken out to a minimum indemnity of £5,000,000.
- In no cases must boards lead to excavations or damage of any kind to be made to the highway.
- In no circumstances should any street advertisements interfere with required vision lines for traffic and pedestrians.

Appendix 13

ILLUSTRATIONS OF "A" BOARDS

