

CHERWELL DISTRICT COUNCIL

DRAFT STREET TRADING, PAVEMENT LICENSING POLICY

INTRODUCTION

Cherwell District Council aims to support business ventures and encourages the provision of street trading and cafés within the district. In towns and villages cafes in particular make a positive contribution by adding vitality, colour, life and interest to the street scene. They can help maximise the use of public spaces and aid the local economy. In more rural areas, street trading outlets enable residents, visitors and travellers to obtain refreshments when there is nothing else immediately available. Both add to the facilities offered to people who visit, live and work in the district.

This policy is intended to help prospective street traders and cafe proprietors to understand where trading might be encouraged. It is important however, that sites are properly administered and managed to ensure that they meet legal requirements and the high standards expected by the Council.

Anyone wishing to apply for either a Street Trading Consent or Pavement (Tables and Chairs) Permit should read this policy, the associated guidance, and detailed conditions in order to check that their proposal meets all the criteria.

Although each application will be considered on its own merits this policy contains key points that must be considered in every case. In order to ensure consistency of decision making, the council will apply these guidelines to all street trading activities and pavement permits in its area.

The document is split into three sections, namely:

- Street trading
- Pavement permits (often called Tables & Chairs permits)
- Other activities

STREET TRADING

Local Government (Miscellaneous Provisions) Act 1982

General

Under the above legislation locations are designated as either consent, licence or prohibited streets.

The means that, subject to certain legal exemptions, nobody can trade in any street in the district without first obtaining a street trading consents or licence from the council.

- In order to trade anywhere in Cherwell District Council area you must receive consent from the council. In certain areas (Banbury, Bicester and Kidlington) the council maintains a list of designated pitches; however, there is a waiting list, and you may have to wait some time before being considered for one of these.
- You may apply for street trading consent on any other street in the district.

Definitions of terms used

The following definitions apply:

‘Street trading’ means the selling of, or exposing or offering for sale any article (including a living thing) in any street. A Street includes:

- any road, footway, beach or other area to which the public have access without payment
- a service area as defined in section 329 of the Highways Act 1980, and also includes any part of a street

A ‘consent street’ is a street in which street trading is prohibited without a street trading consent.

‘Consent’ means consent to trade on a street within the council’s area.

‘Consent holder’ means the person or company to whom the consent to trade has been granted by the council.

‘Static street trader’ means a trader granted permission by the council to trade from a specified position.

‘Mobile trader’ means a trader who moves from street to street but trades for less than 60 minutes at any one point and does not return to a similar trading position within 2 hours.

‘Authorised officer’ means an officer employed and authorised by the Council to act in accordance with the provisions of the Local Government (Miscellaneous Provisions) Act 1982.

Exempted street trading activities

The following activities do not require street trading consent:

- pedlars authorised by a certificate granted under the Pedlars Act 1871
- trading in a trunk road picnic area provided by the Secretary of State under section 112 of the Highways Act 1980
- newsvendors
- trading on/from the forecourt of a petrol filling station or at a shop premises
- a roundsman (a person who delivers orders to customers by prior arrangement)
- the use for trading under Part VIIA of the Highways Act 1980 of an object or structure placed on, or in or over a highway
- operating facilities for recreation or refreshment under Part VIIA of the Highways Act 1980
- doing anything authorised by regulations made under section 5 of the Police, Factories, etc, (Miscellaneous Provisions) Act 1916

PAVEMENT (TABLES & CHAIRS)

Highways Act 1980

General

If the area outside particular premises is owned by the town, district or county council, then it is likely that permission will have to be sought under the Highways Act for permission to place the tables and chairs outside.

As a general guide, a clearance of at least 1.8m is required from the kerb to the perimeter of where the tables and chairs are to be placed.

The area for which a pavement permit is sought must be highway as defined by S115A Highways Act 1980, namely:

- a highway in relation to which a pedestrian planning order is in force;
- a restricted byway;
- a bridleway;
- a footpath (including a walkway as defined in section 35(2) of the Highways Act 1980);
- a footway;
- a subway constructed under section 69 of the Highways Act 1980;
- a footbridge constructed under section 70 of the Highways Act 1980;
- a highway whose use by vehicular traffic is prohibited by a traffic order but whose use by
- other traffic is not prohibited or restricted or regulated by such an order; and
- to a local Act walkway.

Applicants for pavement permits are required to confirm the status of the application site with Oxfordshire County Council before making their application.

OTHER ACTIVITIES

General

There are a number of other activities that take place in the streets of the Cherwell district that cannot be controlled by licences or permits. These include:

- Awareness – people, groups or organisations such as radio stations, television stations or the armed forces may wish to raise awareness by handing out leaflets or undertaking promotional activities.
- Busking – street performers is the practice of performing in public places, for gratuities.
- Market research – this type of activity includes mail order companies, insurance companies and national questionnaires.
- Markets – these are dealt with in a separate policy.
- Pedlars – they are required to hold a certificate issued by the police force in the area that they reside. They are able to travel to trade within the area. They must only stop to trade when approached by a customer. They must not remain stationary after the sale has been made.
- Petitions – people or organisations asking members of the public to support their cause, such as political groups, welfare or ecological groups.
- Street collections - Persons wishing to collect money on a street or public place must obtain a permit from the Council. Applications for Street collections must be applied for at least one month in advance of the collection date, and would be subject to the conditions outlined in the Street Collections policy.

APPLICATION PROCESSES

Street trading

When making an application you will need to provide the following:

- a completed application form;
- the correct fee (see Appendix C);
- a map/street plan or aerial photograph clearly identifying the proposed site position (for static street traders);
- specified areas of trade (for non-static traders);
- proposed trading times;
- photographs of the vehicle, stall, cart, etc, that will be used for the street trading activity (in the case of a vehicle, exterior and interior views are required);
- evidence of public liability insurance;
- other associated permissions i.e. planning and any appropriate licences under the Licensing Act 2003;
- Details of a commercial waste agreement (contact Environmental Services on 01295 221921 for further information).
- Proof of identity, and address of the applicant, such as a passport or DVLA photo card driving licence;
- Details of neighbours, business or otherwise, within the immediate vicinity of the specified trading area.

For food outlets, the Council also requires:

- (if using gas) a gas safety certificate issued by a GAS SAFE registered engineer;
- (if using electricity) an electrical safety certificate issued by a NICEIC registered contractor;
- copies of certificates to confirm all food handlers have undertaken a satisfactory level of food hygiene training;
if using a mobile unit, confirmation that it is registered under article 6, paragraph 2 of Regulation EC No 852/2004

Pavement permits

The Council will not accept an application unless the following have been provided:

- a completed application form;
- proof of identity, and address of the applicant, such as a passport or DVLA photo card driving licence;
- the correct fee is payable on issue of the permit (see Appendix C);
- plans;
- photographs of the type of furniture to be used;
- confirmation of the status of the site (i.e. highway or otherwise);
- evidence of public liability insurance;
- Details of neighbours, business or otherwise, within the immediate vicinity of the specified trading area
- confirmation other associated permissions i.e. planning and any appropriate licences under the Licensing Act 2003;

Consultations on applications made

Before a street trading consent or a pavement permit is granted for the first time, the council will carry out a consultation process over a period of 14 days with various persons and groups. Dependent on the type of application, we will consult with one or more the following:

- Thames Valley Police;
- Oxfordshire County Council Highways or the Highways Agency (depending on the location);
- Development Control, CDC;
- Environmental Health, CDC;
- Street Scene, CDC;
- the ward member;
- the appropriate parish or town council;
- neighbouring businesses or properties;
- all businesses or properties within the immediate vicinity *

**Note: It is the applicant's responsibility to notify these owners/occupiers by delivering the form (part B of the application) to the relevant property/business. If they fail to do so the application will be refused.*

Site assessment & inspections

The site will be assessed by an authorised officer of the council. Consents/licences or permits will not normally be granted where:

- a significant effect on road safety could arise, either from the siting of the trading activity, from customers visiting or leaving the site, or from inadequate light or visibility;
- there is a conflict with traffic orders such as waiting restrictions;
- there is already adequate provision of similar trading facilities in the vicinity;
- there would be a significant loss of amenity caused by traffic, noise, odour, etc.

Additionally in the case of street trading food or drink, the vehicle, trailer, stall or other device to be used for the proposed trading activity will be inspected by an Environmental Health officer prior to the issue of consent. It must comply with the legal requirements relating to type of trading proposed. Food hygiene standards must be broadly compliant.

Further advice can be obtained by telephoning Licensing on 01295 753744

Email; licensing@cherwell-dc.gov.uk

Website; www.cherwell.gov.uk

Decision making

If valid representation(s) are made during the consultation period, then the application will be considered at a hearing by the council's Licensing Sub-Committee.

Applications will normally be determined within two months of receipt and may be either:

- granted, whereby the consent or permit will be issued with conditions attached, or
- refused, whereby the fee will be refunded (as appropriate) to the applicant.

The reasons for the decision will be communicated to the applicant, but it should be noted that there is no right of appeal against any decision made in relation to the grant a street trading consent.

Trading hours & staff requirements

The Council does not permit street trading before 6.00am. Provision of hot food and drink after 11.00pm requires a premises licence under the Licensing Act 2005.

Trading consents/licences are granted to individuals. The consent holder does not have to be present at the site during trading hours but must nominate a person aged 17 or over to cover in their absence, and must hold a Food Hygiene Certificate.

Pavement permits will only be issued to cafes, restaurants, public houses or other catering establishments that serve food and drink within the premises, employ sufficient staff to provide table service to the outside area and have sufficient provision of sanitary conveniences for use by the public.

In approving consents, licences or permits, the Council will have regard to an applicant's previous record of compliance with the conditions attached to any previous ones.

Licence details

Every licence or permit issued will show specific details and carry conditions which must be complied with (see Appendix B). The licence or permit must be clearly displayed and/or produced for inspection by an authorised officer of the council or a police officer.

Street trading consents will specify:

- the trader's/business name;
- their address;
- a description of items to be sold;
- details of the trading location/s, days and times.

Pavement permits will specify:

- the trader's/business name;
- their address;
- a description of items to be sold;
- details of the trading location, days and times;
- the number of tables and chairs allowed.

In addition, any conditions considered necessary to individual applications may also be attached. The council retains the right to vary the conditions at any time.

ENFORCEMENT

General

This section of the policy details the council's commitment to enforcing the provisions contained within the appropriate legislation. It also highlights the council's commitment to work in partnership with other enforcement agencies, in order to provide consistent enforcement on licensing issues.

Licensing officers aim to work closely with other enforcement authorities when dealing with issues on the street. We will enforce the provisions of all appropriate legislation and will ask persons causing a nuisance to cease the activity that they are conducting and leave the area.

Authorised officers from the council will visit street traders and holders of pavement permits to assess compliance with the conditions or to undertake any other duty that the authority has, such as food hygiene inspections.

Where licensable activities are conducted without the benefit of a licence or consent, we will look to gather evidence and take enforcement action as appropriate. We may call for assistance from the Police when dealing with such issues.

If an officer is of the opinion that the holder of the trading consent has contravened any conditions, the consent/licence, or permit may be revoked.

Offences

Street trading

(1) A person who -
(a) engages in street trading in a prohibited street; or
(b) engages in street trading in a licence street or a consent street without being authorised to do so under this Schedule; or
(c) contravenes any of the principal terms of a street trading licence; or
(d) being authorised by a street trading consent to trade in a consent street, trades in that street -
(i) from a stationary van, cart, barrow or other vehicle; or
(ii) from a portable stall,
without first having been granted permission to do so under paragraph 7(8) above; or
(e) contravenes a condition imposed under paragraph 7(9) above, shall be guilty of an offence.

(2) It shall be a defence for a person charged with an offence under sub-paragraph (1) above to prove that he took all reasonable precautions and exercised all due diligence to avoid commission of the offence.

(3) Any person who, in connection with an application for a street trading consent or licence makes a false statement which he knows to be false in any material respect, or which he does not believe to be true, shall be guilty of an offence.

(4) A person guilty of an offence under this paragraph shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Pavement permits

Section 115A of the Highways Act 1980 covers the placing of tables and chairs on the highway. Any person doing so without permission is obstructing the highway. No person may place tables and chairs on the highway without a valid pavement permit issued by Cherwell District Council, and if they do so they may be committing an offence.

Appendix A – Licence conditions

The following conditions will be attached to relevant consents, permits or licences:

Street trading

- This street trading consent/licence does not convey any other approvals that may be necessary under the food hygiene regulations, planning legislation or other appropriate legislation.
- The holder of a street trading consent/licence shall take all reasonable precautions to prevent obstruction of the street or danger to persons using the street and to prevent nuisance or annoyance, whether to persons using the street or otherwise.
- The holder of a street trading consent/licence shall ensure that suitable arrangements are made for the disposal of any litter that may be caused in connection with the trading permitted under this consent.
- The holder shall indemnify the Council against all actions, proceedings, claims
- demands and liability which may at any time be taken, made or incurred in consequence of trading for this purpose must take out at the consent holder's expense a policy of insurance approved by the Council in the sum of at least £5 million in respect of any one event and must produce to the Council on request the current receipts for premium payments and confirmation of the annual renewals of the policy.
- The holder of a street trading consent/licence shall be required to seek the approval of the Council to any proposed change to the mode of trading permitted under the consent.
- The name of the holder of a street trading consent/licence trading with a vehicle shall be displayed on the vehicle used in connection with the trading.
- This street trading consent/licence does not convey any right to trade on privately owned property.
- Annual Consents run from 1 April and all Consents expire on 31 March in any year.
Fees for an annual consent may be paid in quarterly instalments but must be paid in advance of the following dates:

1 April, 1 July, 1 October and 2 January.

Fees for six month consent may be paid in two equal instalments, but the first instalment must be paid in advance of the issue of consent and the second instalment not later than three months after commencement of the consent. Fees for three-month or one month consents must be paid in advance of the issue of consent. In the event of any instalment not being paid by the time hereby specified, the consent shall be revoked forthwith.

- The holder of the street trading consent shall ensure that no excessive noise emitting machinery is used in connection with the trading, inclusive of liquid fuelled generators.
- The Council reserves the right to add further conditions, or suspend and revoke a consent if the holder breaches any of the conditions
- Street trading consents are non-transferable.

Pavement (tables & chairs) permits

- This permission is not transferrable.
- The tables, chairs and umbrellas shall only be placed outside the premises between the hours of 10 am and 6 pm.
- The area so permitted to be used solely for the purpose of consuming food and drink purchased on the premises. It is strictly forbidden to prepare any food and drink in this area.
- The tables, chairs and umbrellas shall be of such a design as may be approved by the Council in writing and be kept in good repair and condition at the permit holder's expense.
- Nothing contained in this permit gives the holder permission to make fixtures to or excavations of any kind in the surface of the highway which shall be left entirely undisturbed.
- The permit holder shall make no claim or charge against the Council in the event of the chairs or tables or other objects being lost, stolen or damaged in any way from whatever cause.
- The permit holder shall indemnify the Council against all actions, proceedings, claims demands and liability which may at any time be taken, made or incurred in consequence of the use of the chairs and tables and other objects and for this purpose must take out at the permit holder's expense a policy of insurance approved by the Council in the sum of at least £5 million in respect of any one event and must produce to the Council on request the current receipts for premium payments and confirmation of the annual renewals of the policy.
- No charge shall be made by the permit holder for the use of the chairs and tables and other objects.
- Waste from the permit holder's operations must not be disposed of in the permanent litterbins provided by the Council.

- Refuse and litter deposited on the highway in the vicinity of the chairs and tables and other objects must be removed each day by the permit holder at their expense or at more frequent intervals as may be required by or under the Environmental Protection Act 1990.
- The permit holder shall remove the tables, chairs and windbreaks from the highway outside the hours permitted by Clause 2, and immediately if required to do so in order to permit works in or the use of the highway by:
the Council, the County Council, the police, fire and ambulance services, any utility operator or builders' vehicles, hearses and furniture removal vans.
- The permit holder shall be responsible for any rates, taxes and other outgoings which may be charged.
- Permissions run from the date of this permit, and would be subject to an annual renewal fee. Failure to pay any relevant fees would result in suspension or removal of permissions.
- The Council reserves the right to condition, suspend or revoke a permit if the permit holder breaches any of the conditions.
- Upon request permit holders will be required to clearly define the permitted area by the use of barriers of a type agreed with the Licensing Authority.

FURTHER INFORMATION

For further details of any of these consents, licences or permits please contact:

Licensing, Cherwell District Council, Bodicote House, Bodicote, Banbury, OX15 4AA

Phone: 01295 – 753744

Email: licensing@cherwell-dc.gov.uk

USEFUL LINKS

Street trading

<http://www.legislation.gov.uk/ukpga/1982/30>

Pavement licences

<http://www.popall.co.uk/LicensingApplications/pavementlicences.asp>