

Appendix 1: Department for Transport Guidelines:

The measures reflect officer opinion and legal advice regarding the council's duties under the Disability Discrimination Act and the application of the Department for Transport's Mobility Guidance. The Department for Transport produces guidelines which, although they do not have legal status in the sense of being Law, do set out what may be regarded as established best practice. As well as improving matters for service users, working to these guidelines would reduce the validity of challenges to the council regarding the placement of traders' items.

Section two of the DfT guidance acknowledges appropriately the diversity of the population of people who are encompassed by the legal definition of disability. It not unreasonably concentrates for the purpose of this document on people who are mobility impaired and visually impaired people (including the elderly frail. The guidance provides the following minimum widths to allow people to move down passageways:

Situation involving disabled person	Minimum width recommended in DfT guidelines
A person without a walking aid	700mm
A person with a walking stick	750mm
A person with a walking stick, crutches or walking frame	900mm
A blind person using a long cane or assistance cane	1100mm
A person who is guided	1200mm
A wheelchair user and an ambulant person side by side	1500mm

The DfT guidance (Section 3) deals with footways and pedestrian areas and gives four distances by way of standards:

Circumstances	Minimum width recommended in DfT guidelines
Normal circumstances	2000mm
Minimum acceptable under most circumstances	1500mm
Absolute minimum	1000mm
Maximum length of restricted width (of any obstruction).	6m

Appendix 2: Chronology & Relevant Data.

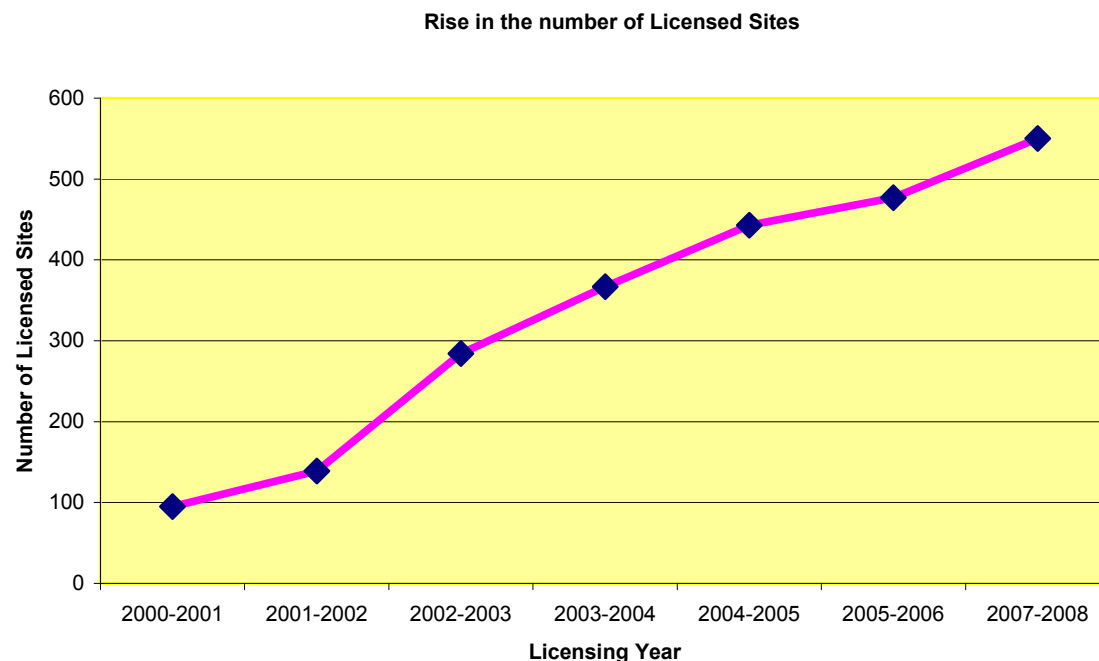
Below is a chart showing the changes that have contributed to the need for a review of procedure/policy. They consist of a history and data which have influenced the recommendations themselves.

Year	Chronology of Significant events
1997 to 2001	Licensing policy (based on previously administered East Sussex County Council's policy) adopted by unitary authority. Refers mainly to tables and chairs, with some A-boards and shop displays licensed within Brighton "Old Town". Plans and Traffic section responsible for administration. By 2001 no valid A-board licences were in place.
2001	Responsibility for trader item licensing transferred to a specialist highway licensing officer. At this stage only tables, chairs and some limited displays were licensed by the Council.
2002	Expansion of the above system. Experimental licensing scheme to cover all types of traders' objects set up in George Street, Hove.
2003	<p>The setting up of the Highway Enforcement Team. Scheme to licence all traders' items placed upon the highway in certain areas of the city centre established. This was in effect a revival and expansion of the East Sussex licensing regime previously adopted by Brighton Borough and covering the "Old Town". The intention was that the whole city would eventually be covered by the scheme.</p> <p>Considerable, successful consultation with DAAG and other special interest groups was undertaken during the set-up process, the intention being to establish a practical working compromise that would protect rights of access and use of the highway by businesses while complying with statutory duties with regard access and the DDA.</p>
2003 to date	<p>Expansion of the scheme to take into account the growing needs and activities of traders and the change in character of business within the city (in particular the growth in the number of cafes and bars). It presently covers the whole of Brighton "Old Town", part of Kemp Town, most of Western Road, George Street (Hove), Brunswick & Adelaide and the Rottingdean village centre.</p> <p>During this period consultation with DAAG and other relevant/concerned interest groups continued.</p> <p>Note that available resources have not kept pace with the increase in the number of traders' sites placing items and</p>

	additional duties allocated to the Highway Enforcement Team (see graph below). These factors, and certain legal ambiguities, have limited the spread of the Licensing Scheme and added to current concerns.
2005	<p>Detailed surveys undertaken in Lanes, North Laine and Kemp Town by the Highway Enforcement Team produce a “Street Clutter” Report, recommending a holistic approach to the placing of objects upon the highway. Initiating and organisation of an experimental, multi-agency “clutter reduction” operation in North Laine. Multi-agency action initiated against illegal street traders (Highway Enforcement, Environmental Health, and Sussex Police).</p> <p>Detailed consultation undertaken with North Laine traders, including establishing a preferred layout of items during pedestrian hours.</p> <p>Introduction of domestic wheelie bins (Cityclean) and establishment of 1m. minimum footway width as acceptable within council policy.</p>
2007:	<p>“Street Clutter” report on Brunswick & Adelaide, recommending a holistic approach to the placing of highway objects, prepared and submitted. Representations from interest groups regarding highway access. Deaf/Blind Access Scrutiny Report recommends specialised re-examination of current policy.</p> <p>Policy review delayed by election year and legal queries</p>
2008:	<p>Licensing policy presented to Environment Committee in January 2008 to ensure that officers were working to a current, member-approved policy. No major changes proposed at that stage. Progression of officer review, taking into account political issues, consultation with DAAG, legal queries, challenges from the RNIB and exigencies of the service.</p> <p>Further representations from interest groups regarding highway access. Establishment of Brunswick & Adelaide Licensing Zone.</p> <p>Initial preparation of current Report</p>
2009:	<p>Finalisation of current Report Officer. Additional representations from interest groups regarding highway access. Delegated authority/discretion reduced in line with legal advice.</p>

Change in scale of the Traders' Items issue:

In 2000-2001, when the Highway Enforcement Team took responsibility for licensing and monitoring traders' items placed upon the Public Highway, there were 95 licensed sites across the whole of the City. There are now over 550 such sites. The chart below shows the rise in the number of shop, café and restaurant sites licensed by the Highway Enforcement Team. Licensing resources have not been increased since 2003.



Growth in advertising signs: In 2002 it was estimated that there were about six hundred potentially licensable advertising signs in the city. At present some three hundred premises are licensed to place signs within the Licensing Zones alone (each site being permitted a maximum of two such signs per premises). This figure excludes signs placed by premises with other Highway licences (holders of tables and chairs or shop-display licences). Inside and outside the Zones it is estimated that over two hundred sites remain unlicensed. This means that the number of such signs within the City has grown from approx. 600 to approx. 1,300 within five years.

Appendix 3: Licence Conditions 2009-2010:

The following conditions will be introduced to apply to all highway licences issued or renewed for and from 1st April 2009.

Note that these conditions are not part of the measures under consideration by members but have been set by officers under delegated authority. They are therefore presented for information only.

Terms:

- The term “licence” used below refers to any Highway Permission issued by the Highway Enforcement Team.
- A “licensee” is deemed to be the body or individual to whom the licence has been issued.
- A “licensed area” is that area of public highway covered by the licence.

Legal Issues:

1. This licence is not transferable.
2. Sub-letting of the highway is forbidden. A frontager who is a licensee may, with the advance written permission of the council, permit a suitable third party (i.e. a party the council would consider to be an appropriate licensee themselves) to display items within a relevant licensed area, but there should be no financial transaction associated with such an arrangement. Any third party must meet and comply with all licence conditions, including the holding of Public Liability Insurance (see below). Responsibility for breaches of licence conditions will lie with the licensee.
3. The licensee agrees to indemnify the council against any claims in respect of injury, damage or loss arising out of the grant of the licence. Public Liability Insurance cover of at least one million pounds must be carried for the duration of the licence. Evidence for this cover must be produced on demand.
4. The licence may be suspended or revoked and/or the licensee required to temporarily remove the objects by the council for any legally defensible reason. The licensee shall not be entitled to any compensation for loss of trade or business as a result.
5. If deemed necessary the council may alter licence conditions at any time.
6. Where necessary, the council may place time limits to restrict the use of licensed areas to permitted hours. In general, these restrictions will apply to premises with alcohol licences and will not exceed the hours set by the terms of such licences.
7. Licences are valid for a maximum of 12 months and expire at 24:00 hrs. on the first 31st of March following the date of issue. Licences are subject to an annual review. Payment of licence fees is a condition of the licence.

8. Licences only relate to the placing of objects upon the highway. It is the responsibility of the licensee to obtain all other consents required in connection with the proposed extension of their business onto the highway including, where appropriate, any amendment to their existing liquor licence.
9. It is a condition of highway licences that all consents and permissions, and all health & safety, environmental health or other legal provisions or measures required by Brighton & Hove City Council or other legal authorities, are obtained and adhered to. Proven failure to comply with legislation and/or the reasonable and legitimate instructions of an authorised officer of the Council, Her Majesty's Health & Safety Executive or the Police may be considered a breach of the conditions governing the licence.

Licensed Areas:

1. The council reserves the right to limit the number of items placed within a licensed area. Factors influencing such limits may include the density of tables/chairs within a licensed area and the ratio between the number of covers within the licensed area and those inside the actual premises.
2. Patrons within a licensed area must be seated. Vertical drinking shall not be permitted at any time.
3. Benches or other objects which cannot easily be removed and stored within the licensed premises shall not be permitted unless noted within the original application and agreed in advance and in writing by the council. The council may specify how items left out overnight shall be stored or stacked.
4. Licensees who significantly alter the nature of their items (e.g. the design of seating/tables/barriers) without prior consultation and a written agreement from the council will be deemed to have breached licence conditions.
5. No free-standing items issuing heat or with heated elements (such as gas or electric heaters) may be permitted within a licensed area unless the intention to place such items was noted within the original licence application and agreed in advance and in writing by the council. A Risk Assessment for the use of such items must be submitted with the application
6. The council can insist that licensed areas are surrounded by barrier or fencing. The use and design of all such barriers must be approved in writing by the council.
7. The licensee shall ensure that all glasses, bottles and other debris from the licensed premises are collected and returned to the licensed premises regularly and at the end of each session.
8. The council may require the use of plastic containers only within certain licensed areas.

9. The licensed area must be kept clean, being washed down as necessary, and free of litter at all times. The licensee is responsible for regularly clearing all debris and litter associated with the licensed premises, whether inside the bounds of the licensed area or not.
10. No object may be placed upon the highway outside the licensed area or away from the licensed position at any time. All items must be checked at regular intervals. Areas associated with the consumption of food or drink must be constantly monitored. Items left unattended or found out of sight of the licensed premises may be removed and impounded without warning.
11. The cooking of food within a licensed area is prohibited.
12. Shop displays made up of rows of irregular items (e.g. pots) should ideally have vertical panels of not less than 0.3m height, at the edges & sides so as to provide a regular and continuous tapping board for the guidance of the blind and partially sighted. If necessary the council can make provision of these a special condition of a licence.
13. No goods or food shall be displayed for sale in the highway unless it is evident that such goods are sold as part of the normal business of the licensee. The nature of such displays and the goods for sale must be formally approved by officers and noted within the licence agreement. Where such displays are permitted all sales must take place upon private property. No financial exchanges may take place upon the Public Highway, other than in connection with sitting-out areas.
14. Licensees with display or sitting-out areas will be supplied with a Data Sheet showing the extent of the highway licensed to them. This document must be kept on site and be available for inspection on demand at any time by officers of the council or other agencies, elected members and the general public.

Advertising boards;

1. No more than two advertising boards may be permitted for every two elevations of a licensed premises and the total surface areas of all advertising boards per said elevations (whether on the highway or on private land or decking or on any combination of the same) may not at any time exceed the limits for such advertising under Planning Regulations (a total area of 4.6 square metres).
2. Premises with sitting-out areas may not place advertising boards outside licensed areas unless such placements are separately licensed and conform with all other relevant conditions.
3. Licensed advertising boards shall be between 0.75m and 1.2m high and between 0.5m and 1.1m wide only. Larger or smaller boards will not be permitted.

General:

1. The licensee must clearly display on site a Display Licence provided by the council. This should be placed in a window, glass door or menu stand of the licensed premises clearly be visible and legible from the highway.
2. Anything left upon the highway outside business hours or the hours stated in the licence conditions, or any item found chained or tied to any other object, street furniture or building without prior written permission, may be removed and impounded without further warning.
3. The improper parking of vehicles by staff or persons associated with the licensed site (including delivery vehicles) will be considered a breach of the licence. This is of particular importance within those areas where vehicle access is restricted and in streets that are periodically pedestrianised. In certain parts of the city licensees may be required to agree to restrictions on delivery times.
4. To promote the work of the Brighton & Hove Drug and Alcohol Action Team and support the operations of the Council's Trading Standards Team, licensed sites involved in the sale of cigarettes or of alcohol for off -premises consumption shall be required to display, at all times, such notices relating to illegal sales to or illegal purchase on behalf of minors as may be supplied by the Highway Enforcement Team.

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5. Note that the following general rules will be applied to all officer-approved applications/sites within the city:
 - A) That no licensed traders' items will be permitted to reduce the width of a footway to less than 1.3 metres except where;
 1. 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
 2. 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
 3. a road is considered to be "shared space" and the whole carriageway is generally available for pedestrian use
 4. discretion to allow this has been exercised by Elected Members in Committee or Cabinet, due to special circumstances.
 - B) That where a footway is reduced to a width of 1.3 metres (or less) by objects (whether these objects be licensable traders' items or fixed street furniture such as lamp posts, bins etc.) "turning circles" for manual wheelchair users and guide dogs must be established at regular intervals. These "turning circles" shall not be less than 1.6m in length and must be maintained at least every 6 metres along the length of a restricted footway.
 - C) 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 or out of sight from a window or door of said premises.

In certain circumstances, officer application of the above criteria may be challenged by means of Formal Appeal to Committee or Cabinet. Such appeals should take place at the licence application stage. Note however that no activities can take place at a site until such a decision is reached.

Enforcement Procedure (removals):

The following enforcement procedure shall be applied as standard for all items placed on the Public Highway in breach of the DfT guidelines and the rules and conditions of the Highway Licensing System as detailed above:

- That on the discovery of a breach of the guidelines, rules and conditions, a written warning shall be issued to the relevant business/person, warning and advising them of their need to abide by the prevailing regulations.
- That on the discovery of a second such breach within eight weeks of the first, a second warning notice be served.
- That on the discovery of a third such breach within eight weeks of the second warning a third warning shall be served

If the recipient of a third warning is a holder of a Highway licence, then this licence shall be temporarily suspended by virtue of said notice, pending consideration of the case by the Senior Highway Enforcement Officer. The period of suspension will be dependent on the seriousness of the breach and the measures taken by the licensee to ensure future compliance with the regulations. Further breaches may result in the rescinding of the licence.

Any unauthorised items found on any site following a third warning or suspension/rescinding of a licence may be removed from the Public Highway and impounded without a further warning being served. Owners of objects so impounded will be given the opportunity to recover their property. Where appropriate a charge may be made by the Council for the costs of removal and storage.

The Council reserves the right to proceed with prosecution under the Highways Act 1980 at any stage of the above procedure in any case involving gross or regular breaches of legislation.

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