Street Café Licensing Policy

2016 – 2021

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1. **Introduction**

1.1 Stoke-on-Trent City Council has produced this policy for Street Café licences in order that applicants and the public understand the issues involved in permitting what are legally temporary obstructions to the pavement or carriageway.

1.2 The policy aims to:
- Make businesses aware of the opportunities available to them to add an extra dimension to their food and drink offering
- Ensure the safety of all users of the public highway, pavements and carriageways
- Ensure that Street Cafés are operated in a safe manner following clear guidelines which minimise interference and disruption for highway users

2. **The Law**

2.1 Street Cafés are covered by regulations made under the Highways Act 1980 S.115

2.2 Section 115E states that ‘a council may grant a person permission to use objects or structures on, in or over the highway which causes an obstruction’.

2.3 This permission applies if the objects or structures on, in or over the highway are:
   i. for a purpose which will result in the production of income
   ii. for the purpose of providing a centre for advice or information
   iii. for the purpose of advertising

2.4 Street Cafés normally fall within category (i.).

2.5 Section 115F gives a council power to impose conditions on permissions granted under S.115E.

2.6 Section 115G requires a council to publish a notice before any permissions are granted under S.115E.

2.7 Section 115K gives the council powers to serve notice where the permission granted is breached, requiring remedy of the breach and recovery of any expenses plus interest incurred where the council remedy the breach themselves.

3. **Definition of a Street Café**

3.1 A Street Café is defined as non-fixed or temporary objects such as tables, chairs and barriers placed on the highway, which includes all roads, bridges, carriageways, cart-ways, horse-ways, bridleways, footways, causeways, church-ways and pavements over which there exists a public right of passage, that is to say a right for all Her Majesty’s subjects at all seasons of the year freely and at their will to pass and repass without let or hindrance highway and any public bridge, road, lane, footway, square, court, alley or passage, whether a thoroughfare or not.

3.2 Objects placed on private forecourts or within designated areas covered by Street Trading Legislation do not fall within the definition.

4. **Powers regarding Street Café licences**

4.1 Under the council’s constitution the following have powers in relation to Street Cafés;

   a. Licensing and General Purposes Committee – approve and amend policy
   b. Licensing officers – grant licences which conform to policy requirements
c. Licensing sub-committee – adjudicate applications which don’t conform to policy requirements
d. Licensing sub-committee - adjudicate applications which are opposed
e. Licensing officers – require breaches of licence/ conditions to be remedied
f. Licensing officers – remedy breaches and recover costs incurred plus interest
g. Licensing officers – rescind licences and require removal of street furniture

5. Application Requirements

5.1 Applications should be made to Stoke-on-Trent City Council's Licensing Services.

5.2 On-line applications are preferred via .Gov.UK

5.3 Applications must be accompanied by a location plan to scale 1:1250 or less identifying the premises, and the location of the proposed Street Café in red.

5.4 Applications must be accompanied by a site plan to scale 1:200 or less showing:
   • Entry and exit points
   • Building lines
   • Premises boundary
   • Changes in level and kerbs
   • Size and shape of seating area
   • Number and arrangement of tables and chairs
   • Any other furniture proposed

5.5 Applications must be accompanied by evidence of a public liability insurance policy covering the business premises and activities with a cover amount of at least five million pounds.

5.6 Applications may include letters from other interested frontages.

5.7 Applications must be accompanied by the relevant fee.

6. Determination of Applications and Licence Award

6.1 No tables or chairs should be placed upon the highway until the application is determined and the applicant has been advised of the outcome.

6.2 Incomplete applications will not be accepted.

6.3 Valid applications will be subjected to 28 days of public consultation before a decision is made. Public notices will be erected by the council at or near to the applicant premises detailing the proposals including the times and days of intended operation.

6.4 Valid applications will also be referred to relevant departments within the council and Staffordshire Police and Staffordshire Fire and Rescue services for comment. Applicants may negotiate with these parties, to resolve any issues raised during consultation, prior to a decision being made.

6.5 Any comments received, which remain unresolved, will be assessed for relevancy by licensing officers and if deemed appropriate will cause the application to be put before the licensing sub-committee.

6.6 Where no relevant comments are received, or relevant comments are resolved by negotiation, applications may be approved by licensing officers.
6.7 Approved applications will result in a Street Café licence being issued for a period of one year with the conditions at Appendix 1 attached (the Standard Conditions) or the standard conditions plus additional conditions where appropriate.

6.8 The licence issued by the authority may be issued electronically for the licensee to print and display. A copy of the licence must be displayed on the premises in a position where it is visible to patrons.

7. Determination of an Application by Sub-Committee

7.1 Where relevant comments are received in respect of an application and are not resolved by negotiation the application will be put before a licensing sub-committee for determination.

7.2 Both the applicant and the person making comments will be advised of the hearing time and date, and provided with a copy of the report to be made to the sub-committee.

7.3 Both parties will be given the opportunity to address the sub-committee, and ask each other questions of fact, before a decision is made on the application. The sub-committee may also ask questions of any party that they feel relevant to the determination process.

7.4 The sub-committee may grant the application, grant it subject to conditions, or refuse the application. Reasons for any conditions or a refusal will be provided to the applicant.

7.5 Written confirmation of the decision will be sent to all parties within 7 days of the sub-committee hearing.

8. Renewals

8.1 It is the responsibility of the licensee to ensure that renewal applications are made prior to the expiry of an existing licence in order for permissions to continue uninterrupted.

8.2 Should a renewal application be received after the expiry of a previous licence, it may be treated as a new application, and attract a higher fee and require additional information to be supplied.

8.3 Renewals in respect of previous licences can be made by submitting a completed renewal form together with evidence of the required insurance, any third party letters and the renewal fee.

8.4 All renewal applications will be subjected to the consultation process detailed above.

8.6 Any proposed changes to permissions should be requested at the time a renewal application is submitted, as the legislation governing Street Café licences does not allow for the variation of the licence once issued.

9. Criteria used to grant Street Café licences

9.1 The council will, when considering applications, promote the following aims and objectives;

   a. Create a vibrant diverse street scene which encourages residents and visitors to the city to visit and linger in our towns and district centres
   b. Ensure ease of movement and access for all
   c. Ensure safety for pedestrians and other highway users.

9.2 While no prescribed style, design or layout is dictated the council expects that the standard of Street Cafés and the furniture and fittings used should reflect and/or enhance the area it is situated in. Where this is not achieved any future licences may be refused for this reason.
10. Further Information

10.1 The council may request at the time of application or later that additional information is provided to it as may be considered relevant for the purpose of considering and reviewing applications and licences. Failure to provide such information may result in an application being rejected or a renewal being refused.

10.2 The council is committed to ensuring that residents and visitors have access to affordable, nutritious, sustainably produced and tasty food, prepared to high hygiene standards, regardless of income. In addition, encouraging a diverse range of independent enterprises that provide sustainable local food and employment is of equal importance. Applicants for a Street Café licence should consider how their proposals can support the council with these objectives.

11. Enforcement

11.1 It is recognised that well-directed enforcement activity by the council benefits not only the public but also responsible business operators.

11.2 In pursuing its objective of encouraging responsible businesses, the council will conduct proportionate oversight of Street Café licensing and licences, and take enforcement action only where necessary in accordance with the Public Protection enforcement policy.

11.3 Where non-compliance with this policy, the standard conditions, or any conditions attached to a licence is observed licensing officers may by notice require that any breach is remedied or undertake works to remedy a breach and recover the cost plus interest from the licensee.

11.4 In the case of a severe breach and lack of co-operation by the licensee the licence may be immediately rescinded and the street furniture removed by the council.

12. Current Consultees for Street Café Licence Applications

Staffordshire Police Licencing Section
Staffordshire Fire & Rescue Service
Public Protection – Stoke-on-Trent City Council
City Centre Co-ordinator – Stoke-on-Trent City Council
Markets Manager – Stoke-on-Trent City Council
City Renewal Services - Stoke-on-Trent City Council
Landscape Development - Stoke-on-Trent City Council
Transport Network Services - Stoke-on-Trent City Council
Regeneration Development - Stoke-on-Trent City Council
Access Officer, Stoke-on-Trent City Council
Parking Services - Stoke-on-Trent City Council
Appendix 1 The Standard Conditions attached to all Street Café Licences

In these conditions:

1.1 “the Plan” means the plan submitted in support of the licence application.

1.2 “the Street Furniture” means the permitted maximum number of chairs and tables indicated on the licence.

1.3 “the Licensed Area” means that area of land being part of the public highway shown for the purpose of identification only edged red on the plan submitted with the application.

1.4 “the Licensed Premises” means the Licensee’s adjoining premises.

1.5 “the Application” means the Application for a Licence to Operate a Street Café on the Highway in Stoke-on-Trent completed by the Licensee.

2. THE LICENCE AUTHORITY

The Council is the Highway Authority for the City of Stoke-on-Trent and pursuant to Section 115E of the Highways Act 1980 (as amended) (“the Act”) the Council’s Licensing section will oversee and administer permissions for Licensees to place the Street Furniture on the highway within the Council’s area on behalf of the Highways Authority.

3. LICENCE

3.1 The Licence is to commence on [insert date] and shall continue for a period of one year unless terminated beforehand by either party in accordance with Clauses 4.29 and 4.31 below.

3.2 The licence must be displayed on the premise and be clearly visible to patrons at all times.

4. TERMS AND CONDITIONS OF STREET CAFÉ LICENCE

4.1 The fee payable for the provision of this Licence (“the Licence Fee”) shall be payable by the Licensee to the Council in one lump sum in advance prior to the determination of the application.

4.2 The Licensee shall at all times ensure that the Street Furniture shall not be placed outside of the Licensed Area.
4.3 The Licensee shall at all times ensure that the Street Furniture in use is of the type and description detailed in the Application for a Licence.

4.4 The Licensee is permitted to operate a street café (except on the occasions set out in Clause 4.5 and 4.6 below) during the following hours (“the Permitted Hours”) namely the hours of, XX:XX and XX:XX inclusive Monday to Friday, Saturday between the hours of XX:XX and XX:XX and on Sundays between the hours of XX:XX and XX:XX.

4.5 The Licensee whose premises are with Zone A (**see attached map**) is not permitted to operate a street café on the days when Port Vale Football Club have home fixtures.

4.6 The Licensee whose premises are with Zone B (**see attached map**) is not permitted to operate a street café on the days when Stoke City Football Club have home fixtures.

4.7 The Licensee is not permitted to operate a street café when the Licensed Premises are being used as a venue to show national or international sporting events on screen.

4.8 No alcohol shall be consumed within the Licensed Area unless a Premise Licence has been issued by the Licensing Authority under the Licensing Act 2003 for the Premises to which the Licensed Area relates.

4.9 No food shall be consumed within the Licensed Area unless the Licensee is registered with the Council as a food business under the applicable food hygiene legislation.

4.10 The Licensee shall ensure that the Licensed Area is at all times during the permitted hours enclosed by a fixed barrier, the type and design of which is to be approved by the Council prior to use and shall at all times thereafter be of the agreed type and design.

4.11 The Licensee shall remove the Street Furniture and the barrier from the Licensed Area outside the Permitted Hours and immediately if required to do so as to permit works in or the use of the highway by:-

(a) the Council, the Police Fire or Ambulance Services or any Statutory Undertakers, or
(b) builders vehicles and furniture removal vans, or
(c) vehicles accessing any adjoining premises for the purpose of loading/unloading goods.

4.12 The Licensee shall make no claim or charge against the Council in the event of the Street Furniture being lost stolen or damaged in any way from whatever cause.
4.13 The Licensee shall indemnify the Council from and against all actions costs proceedings claims demands and all other liability whatsoever which may at any time be taken made or incurred in consequence of the operation of this Licence and for this purpose must take out at the Licensee’s expense a policy of public liability insurance with a reputable company in the sum of at least Five million pounds (£5,000.000) in respect of any one event and must provide to the Council a copy of the insurance certificate as part of the application.

4.14 If for whatever period or reason the public liability insurance policy referred to in Clause 4.13 is not in force the Council shall be deemed to have withdrawn this Licence for the period during which the said policy is not in force and the Licensee may be held liable for obstruction of the highway and prosecution under Section 137 of the Act.

4.15 The Licensee shall not at any time, interfere whatsoever with the surface of the highway.

4.16 The Licensee shall not obstruct any access ways to any adjoining premises or leave any rubbish thereon.

4.17 The Licensed Area must be used solely for the purpose of consuming refreshments and any persons within the Licensed Area consuming refreshments must be seated.

4.18 The Licensee will ensure that all hot food and hot drinks at the premises and where applicable are served in the Licensed Area by waiter/waitress service.

4.19 The Licensee is responsible during the permitted hours for the cleanliness of the Licensed Area and the health and safety of all users within the Licensed Area.

4.20 The Licensee shall provide within the Licensed Area suitable receptacles for the purpose of depositing litter and cigarette stubs which must be removed from the Licensed Area outside of the permitted hours.

4.21 Refuse, litter and spillages deposited on the highway in the vicinity of the Licensed Area and in addition that area of highway bounded by a line measured 5.0 metres from the perimeter of the Licensed Area must be removed each day by the Licensee at the Licensee’s expense or at more frequent intervals as may be required by the Council or may be required under the Environmental Protection Act 1990 (or any amendment thereof).

4.22 The Licensee is not permitted to utilise barbecues or carry out any form of food preparation within the Licensed Area.
4.23 The Licensee shall ensure that any portable heaters, menu boards, signs, A-boards, and planters are at all times located within the Licensed Area.

4.24 The Licensee shall ensure that any lighting will be in accordance with that detailed within the Application.

4.25 The Licensee shall ensure that any music played within the Licensed Area shall not cause a nuisance and annoyance and if requested by any employee of the Council and/or a police officer the Licensee will reduce the volume and/or cease playing the music completely.

4.26 The Licensee shall ensure that any persons within the Licensed Area do not cause any nuisance disturbance or annoyance to the public using the highway or the Owners or Occupiers of adjoining premises.

4.27 The Licensee’s attention is drawn to Section 115K of the Highways Act 1980 (as amended) which refers to failure to comply with the terms of permission:–

(a) If it appears to the Council that the Licensee to whom the Council have granted permission under Section 115E of the Highways Act 1980 (as amended) has committed any breach of the terms of that permission they may serve a notice on the Licensee requiring the Licensee to take such steps to remedy the breach as are specified in the notice within such time as is so specified.

(b) If the Licensee on whom a notice is served under Clause 4.26 (a) fails to comply with the notice the Council may take steps themselves to remedy the breach.

(c) Where the Council have incurred expenses in the exercise of the power conferred on them by Clause 4.26 (a) those expenses together with interest at such reasonable rate as the Council may determine from the date of service of a notice of demand for the expenses may be recovered by the Council from the Licensee.

4.28 The Licensee shall not make any claim against the Council for any loss of earnings revenue or profits which may occur in the event that this Licence is withdrawn either temporarily or permanently for any reason whatsoever.

4.29 The Licensee shall be responsible for any rates taxes and other outgoings which may be charged as a result of its use of the Licensed Area.
4.30 The Council shall have the right to amend or rescind this Licence on the giving of one month’s notice in writing to the Licensee if the Council shall so desire.

4.31 Notwithstanding Clause 4.26 above in the event of non-compliance with any of the terms and conditions of this Licence the Council shall have the right immediately to rescind this Licence and serve Notice on the Licensee for the immediate removal of all the then unauthorised Street Furniture from the highway.

4.32 The Licensee shall have the right to rescind this Licence on the giving of one month’s prior notice in writing to the Council if the Licensee shall so desire.

4.33 In the event of early termination of this Licence by either party for whatever reason none of the Licence Fee will be refunded to the Licensee.

4.34 Any notice required to be served hereunder shall be sufficiently served on the Licensee if left at the Licensed Premises or forwarded by first class post to the Licensee’s address hereinbefore mentioned and in the case of the Council shall be sufficiently served on the Council if addressed to the Licensing Manager for the time being of the Council at the Civic Centre, Glebe Street, Stoke-on-Trent and a Notice sent by post shall be deemed to be given at the time when it ought in the course of ordinary first class post to be delivered to the address to which it is sent.

4.35 This Licence is personal to the Licensee and is not capable of being assigned.

4.36 For the avoidance of doubt this Licence is granted by the Council in its capacity as the Local Highway Authority and not as the Licensing Authority.

4.37 This Licence shall not in any way prejudice or remove the statutory rights of any service undertakers.
Appendix 1 – Zone A relating to Port Vale Football Club
Appendix 1 continued – Zone B relating to Stoke City Football Club