

THE VALE OF GLAMORGAN COUNCIL

ENVIRONMENT AND REGENERATION SCRUTINY COMMITTEE: 12<sup>TH</sup> JULY, 2022

REFERENCE FROM CABINET: 23<sup>RD</sup> JUNE, 2022

**“C26            TEMPORARY HIGHWAY TRADING LICENCES (NBS) (SCRUTINY – ENVIRONMENT AND REGENERATION) –**

The Council had a detailed policy in place for issuing temporary trading licences for businesses wishing to trade on the public highway.

Most highway trading licences were requested for space on public footways and there were no current issues with the arrangements for these licences. Temporary highway trading licences were also issued for Parklets. Parklets were small purpose-built external trading units purchased to assist businesses in Penarth as a pilot project during the pandemic but placed in the live carriageway. The success or otherwise of these was currently being assessed and would be the subject of a future report to Cabinet later in the financial year.

The report considered the long term trading options and associated public realm issues relating to Penarth Esplanade area and the implications of this on the 3 businesses which were currently required to remove their outside trading arrangements from the highway at this location on 30<sup>th</sup> June, 2022 and the knock on effect of this to 1 business at Barry Island, similarly affected.

Significant public realm work had been undertaken on Penarth Esplanade, the Pier and Pier Pavilion since 2021, and it was important that all decisions relating to the current and future operation of land the Council controlled at this location were carefully considered, in order to ensure that the full public value of the work already undertaken was obtained and that the area continued to thrive as a visitor destination and an attractive place to live.

The businesses currently benefitting from the trading licences ‘on carriageway’ at the Esplanade and at Barry Island had all indicated their wish to have new licences. All had previously been issued with notice that their licences would end on 30<sup>th</sup> June, 2022.

There had been significant public interest in the matter of the Esplanade trading licences with widely contrasting views as to whether the al fresco trading arrangements were successful or an annoyance.

Due to the importance of the area and the Council’s wish for its continued development as a high-quality visitor attraction and residential location, it was proposed that a comprehensive engagement and public consultation exercise be undertaken, following the consideration of the report to establish views from all

interested parties as to the longer term public realm, trading and associated transportation arrangements.

It was further recommended that during the consultation period, the existing trading arrangements at the Esplanade and Barry Island be allowed to continue under temporary licence, with certain caveats, and on a month by month basis. Due to the time restrictions between the report and the expiry date of the current trading licences of 30<sup>th</sup> June, 2022, use of the 'urgency procedure' was requested in relation to the trading situation.

The Cabinet Member stressed that the consultation would look to cover the viewpoints from local residents, businesses, and visitors to the area.

Councillor Sivagnanam said that the Council wanted to be collaborative and talk to all stakeholders concerned as part of the consultation. The newly formed Penarth Living Streets Group had recently held lectures that discussed the concept of what people felt Penarth should look like and the consultation would draw on similar discussions. The Council had been keen to support business during Covid so that they were able to continue to function and changes were made to the public space on the Esplanade and Penarth Town Centre using emergency powers as a result of the pandemic but without consultation at the time. It was now time for the Council to consult on how those areas would look going forward. She encouraged all interested parties to take part in the consultation, once launched, to engage and give a view or contact local ward Members.

Councillor Wilson said that the Council had an open mind about the outcome of the consultation and would listen to the people of Penarth, local business and visitors to the area. He also asked to include an additional Recommendation to include local Members, and indeed all Members, in the consultation, or to engage with the consultation as part of Scrutiny Committee, which was agreed.

The Leader added that any members of the public who wished to register to speak at Environment and Regeneration Scrutiny Committee and have their opinions recorded would be welcome to do so. She advised she had received emails on the issue already but felt it was not as simple as a binary choice and that a comprehensive consultation would enable a solution that was right for the town.

This was a matter for Executive decision.

Cabinet, having considered the report and all the issues and implications contained therein and including additional Resolution (9)

RESOLVED –

- (1) T H A T the current position with highway trading licences in place at Penarth Esplanade and Barry Island be noted.
- (2) T H A T the intention be endorsed for the Director of Environment and Housing using his delegated powers, in consultation with the Monitoring Officer/Head of Legal and Democratic Services, to offer new highway trading licences, on similar

terms and conditions to those issued previously, to the following businesses: Casa de Magaritas, Sundowners Champagne Bar, Beachcliff Fish and Chips and Bar, Enzo (Barry Island) in advance of the expiry of the current licenses on 30<sup>th</sup> June, 2022.

(3) T H A T in pursuance of Resolution (2), it be agreed that the temporary licences above be issued on a month by month basis from 1<sup>st</sup> July, 2022 and pending the conclusion of consultation and engagement as referenced in Resolution (5).

(4) T H A T the Director of Environment and Housing be able to determine the quality and design of all street furniture used in the licenced spaces during the temporary licence period for these four businesses.

(5) T H A T delegated authority be granted to the Director of Environment and Housing, in consultation with the Chief Executive, Director of Place, the Leader, and Cabinet Members for Sustainable Places, Neighbourhood and Building Services and Community Engagement, Equalities and Regulatory Services, to determine the details of, and to undertake public consultation on, the longer-term public realm, transport and trading options for the Penarth Esplanade area, the details of which followed the outline as set out in paragraph 2.16 of the report.

(6) T H A T a further report be presented to Cabinet for consideration on conclusion of the public engagement and consultation exercise no later than the end of April 2023.

(7) T H A T the report be referred to Environment and Regeneration Scrutiny Committee in order for the views of that Committee to be considered as part of the engagement and consultation exercise.

(8) T H A T the use of the urgent decision procedure as set out in section 15.14 of the Council's constitution be exercised in connection with Resolutions (2)-(4) above.

(9) T H A T the consultation exercise include local Members and any other Members of that Council who wished to participate.

### Reasons for decisions

(1) To update Cabinet on the current position.

(2) To enable the current businesses to continue to operate, and in a suitably controlled manner, whilst the public engagement and consultation arrangement take place.

(3) To allow suitable time for conclusion of the public consultation exercise without further recourse to Cabinet on the matter of these particular licences.

(4) To ensure that the operation or appearance of these licenced areas can be properly managed and that any issues can be quickly resolved.

- (5) To permit commencement of a comprehensive public engagement and consultation exercise with input from the relevant officers and elected members as to the specific nature of that exercise.
- (6) To allow Cabinet to take decisions on the future of the Esplanade area with the benefit of the views of all interested parties.
- (7) For the views of Environment and Regeneration Scrutiny Committee to be considered.
- (8) To allow the new licences to be offered and regulated from 1<sup>st</sup> July, 2022.
- (9) For the views of all Members to be gathered as part of the consultation exercise, either directly or via Scrutiny Committee.”

Attached as Appendix: Report to Cabinet: 23<sup>rd</sup> June, 2022

Meeting of:	<b>Cabinet</b>
Date of Meeting:	<b>Thursday, 23 June 2022</b>
Relevant Scrutiny Committee:	Environment and Regeneration
Report Title:	Temporary Highway Trading Licences
Purpose of Report:	To agree an extension to a number of temporary highway trading licences on a month by month basis pending the undertaking of public engagement and consultation on possible external trading arrangements and associated works for the Penarth Esplanade area.
Report Owner:	Cabinet Member for Neighbourhood and Building Services
Responsible Officer:	Director of Environment and Housing
Elected Member and Officer Consultation:	Accountant Environment and Housing Services Legal Services (Committee Reports) Director of Place
Policy Framework:	This is a matter for Executive decision by Cabinet.
Executive Summary:	<ul style="list-style-type: none"> <li>• The Council has a detailed policy in place for issuing temporary trading licences for businesses wishing to trade on the public highway.</li> <li>• Most highway trading licences are requested for space on public footways and there are no current issues with the arrangements for these licences. Temporary highway trading licences are also issued for Parklets. Parklets are small purpose-built external trading units purchased to assist businesses in Penarth as a pilot project during the pandemic but placed in the live carriageway. The success or otherwise of these is currently being assessed and will be the subject of a future report to Cabinet later this financial year.</li> <li>• This report considers the long term trading options and associated public realm issues relating to Penarth Esplanade area and the implications of this on the 3 businesses which are currently required to remove their outside trading arrangements from the highway at this location on 30<sup>th</sup> June, 2022 and the knock on effect of this to 1 business at Barry Island, similarly affected.</li> </ul>

- Significant public realm work has been undertaken on Penarth Esplanade, the Pier and Pier Pavilion since 2021, and it is important that all decisions relating to the current and future operation of land the Council controls at this location are carefully considered, in order to ensure that the full public value of the work already undertaken is obtained and that the area continues to thrive as a visitor destination and an attractive place to live.
- The businesses currently benefitting from the trading licences 'on carriageway' at the Esplanade and at Barry Island have all indicated their wish to have new licences. All have previously been issued with notice that their licences will end on 30<sup>th</sup> June, 2022.
- There has been significant public interest in the matter of the Esplanade trading licences with widely contrasting views as to whether the al fresco trading arrangements were successful or an annoyance.
- Due to the importance of this area and the Council's wish for its continued development as a high-quality visitor attraction and residential location, it is proposed that a comprehensive engagement and public consultation exercise be undertaken, following the consideration of this report to establish views from all interested parties as to the longer term public realm, trading and associated transportation arrangements.
- It is further recommended that during this consultation period, the existing trading arrangements at the Esplanade and Barry Island be allowed to continue under temporary licence, with certain caveats, and on a month by month basis.
- Due to the time restrictions between this report and the expiry date of the current trading licences of 30<sup>th</sup> June, 2022, use of the 'urgency procedure' is requested in relation to the trading situation.

## **Recommendations**

1. That Cabinet notes the current position with highway trading licences in place at Penarth Esplanade and Barry Island.
2. That Cabinet endorses the intention for the Director of Environment and Housing using his delegated powers, in consultation with the Monitoring Officer/Head of Legal and Democratic Services, to offer new highway trading licences, on similar terms and conditions to those issued previously, to the following businesses: Casa de Magaritas, Sundowners Champagne Bar, Beachcliff Fish and Chips and Bar, Enzo (Barry Island) in advance of the expiry of the current licenses on 30th June, 2022.
3. That in pursuance of recommendation 2, Cabinet agrees to the temporary licences above being issued on a month by month basis from 1<sup>st</sup> July 2022 and pending the conclusion of consultation and engagement as referenced in recommendation 5.
4. That Cabinet agrees to the Director of Environment and Housing determining the quality and design of all street furniture used in the licenced spaces during the temporary licence period for these four businesses.
5. That delegated authority is granted to the Director of Environment and Housing in consultation with the Chief Executive, Director of Place, The Leader, and Cabinet Members for Sustainable Places, Neighbourhood and Building Services and Community Engagement, Equalities and Regulatory Services, to determine the details of, and to undertake public consultation on, the longer-term public realm, transport and trading options for the Penarth Esplanade area, which details will follow the outline as set out in paragraph 2.16 of this report.
6. That a further report is presented to Cabinet for its consideration on conclusion of the public engagement and consultation exercise no later than the end of April 2023.
7. That this report is referred to Scrutiny Committee (Environment and Regeneration) in order for the views of that Committee to be considered as part of the engagement and consultation exercise.
8. That use of the urgent decision procedure as set out in section 15.14 of the Council's constitution is exercised in connection with recommendations 2-4 above.

## **Reasons for Recommendations**

1. To update Cabinet on the current position.
2. To enable the current businesses to continue to operate, and in a suitably controlled manner, whilst the public engagement and consultation arrangement take place.
3. To allow suitable time for conclusion of the public consultation exercise without further recourse to Cabinet on the matter of these particular licences.
4. To ensure that the operation or appearance of these licenced areas can be properly managed and that any issues can be quickly resolved.

5. To permit commencement of a comprehensive public engagement and consultation exercise with input from the relevant officers and elected members as to the specific nature of that exercise.
6. To allow Cabinet to take decisions on the future of the Esplanade area with the benefit of the views of all interested parties.
7. For the views of Scrutiny Committee (Environment and Regeneration) to be considered.
8. To allow the new licences to be offered and regulated from 1<sup>st</sup> July, 2022.

## **1. Background**

- 1.1 Section 115e of the Highways Act 1980 provides Local Authorities with the power to grant licences to businesses to enable them to trade on the public highway. Such licences enable the licence-holder to place removable furniture and goods, such as tables, chairs or souvenirs, on the highway. The licence process is necessary to ensure that such items are acceptable and operated such that they benefit the business, enhance the local area and do not cause a problem for other users of the highway.
- 1.2 Following a period where street trading licences were issued for free to encourage local businesses to trade externally under Covid restrictions, at its meeting of 12<sup>th</sup> May, 2021, Cabinet agreed in principle to the introduction of a new Policy for the 'Placing of Equipment on the Highway' (Cabinet Minute C571 refers). The Policy was also agreed by the Environment and Regeneration Scrutiny Committee on 18<sup>th</sup> May, 2021.
- 1.3 Due to an issue with the wording of the Cabinet Minute referred to above, where the term 'in principle' was used, it was necessary to utilise the then Managing Director's Emergency Powers, following agreement of the Policy by the Scrutiny Committee, to finally ratify agreement of the new Policy, as there was insufficient time to take the matter back to Cabinet due to its commencement date of 1<sup>st</sup> July, 2021. The Policy is shown at Appendix A to this report.
- 1.4 Delegated authority for the issuing of temporary highway trading licences is granted to the Director of Environment and Housing in consultation with the Monitoring Officer/Head of Legal and Democratic Services and this is detailed at point 15 Annex 01 of Appendix A.
- 1.5 In 2021/22 there were 63 trading licences in place for businesses trading on public footways, 5 licences in place for Parklets trading on the carriageway and 4 licences in place for businesses trading in parking bays on the carriageway. 3 of these businesses are on the Penarth Esplanade, Casa de Margaritas, Sundowners Champagne Bar and Beachcliffe Fish and Chip Shop, and 1 is on Paget Road, Barry Island, Bar Enzo. We currently have 46 applications for licences from 1<sup>st</sup> July 2022, not including the 4 on-carriageway licences. This number is likely to increase over the summer period.
- 1.6 Trading licences for businesses trading on public footways are generally annual and are regularly reviewed in accordance with the Policy by our staff and are renewed on 1<sup>st</sup> July each year.

- 1.7** The costs of the licences vary depending on the size of space required and the numbers of tables and chairs to be installed in that space (Cabinet report 12th May 2021 details all fees). Currently the fees received cover the costs of the licences issued and the associated site inspections and administration. The fees will be reviewed at the end of this financial year as part of the Fees and Charges Report process.
- 1.8** 5 Parklets were purchased to better permit outside trading during the pandemic and the licences for these will continue to be renewed whilst the outcomes of their longer-term use is being considered. Cabinet will receive a separate report on this matter later this financial year.
- 1.9** Prior to the onset of the pandemic, highway trading licences had not been granted on live carriageways (in the case of Penarth Esplanade and Barry Island, high use parking bays), other than for one off, short duration events.
- 1.10** The extreme trading conditions brought about by the pandemic resulted in the Council looking at all opportunities on Council owned land, or public highways, to support local businesses, but it was always envisaged that trading licences issued for areas other than public footways, would ultimately cease when normal trading conditions resumed. Hence the current 30th June deadline for these particular licences.
- 1.11** The 3 licences on Penarth Esplanade have resulted in the loss of 13 seafront parking bays, and the licence in Barry Island, 3 parking bays.
- 1.12** Whilst requests were received to extend these particular licences, due to the intended temporary nature of the external trading arrangements, and in accordance with 1.10 above, the 3 businesses trading under licence at this location were given 3 months' notice of the expiration and non-renewal of their licences, effective from 30<sup>th</sup> June 2022.
- 1.13** A CCTV camera was temporarily located in the vicinity of the trading areas on the Esplanade, following an initial anti-social behaviour incident and whilst the temporary camera did not identify any major poor behaviour issues, a permanent CCTV camera will shortly be located in its place, providing 24/7 CCTV coverage and therefore certain long term safeguards for public safety at this busy location.
- 1.14** Whilst no complaints had been received, the one business operating similarly under licence at Barry Island was provided with the same notice to ensure parity of the carriageway trading decision.
- 1.15** All the affected businesses would still wish to have their licences renewed for the external trading space with a number indicating risks to their trading operations should this not be possible, and even the potential for business closure.

## **2. Key Issues for Consideration**

- 2.1** Whilst there is some local opposition to any continuation of the external trading arrangements on the Penarth Esplanade it is also apparent that there is considerable support for the trading arrangements remaining. This includes the creation of a 4291 name on-line petition (as of 8th June, 2022), seeking the Council's agreement to 'Save outdoor seating Penarth Esplanade'.

- 2.2** The Council has invested significantly to improve the public realm at the Esplanade over the last few years, with footways being redesigned, the carriageway being resurfaced and an extensive painting programme. This, in addition to the work undertaken at the Pier and Pier Pavilion in order that the pavilion could be reopened following its return into the hands of the Council. All these improvements have played a part in significantly increasing the popularity of the area.
- 2.3** Any decisions on the future management and operation of the limited outside space under the Council's control are extremely important, as they must complement the investment already made and ensure that the Esplanade remains a popular visitor destination as well as a place to live for years to come.
- 2.4** It is very clear that there are contrasting views concerning external trading on the Esplanade. Some believe that the 'al fresco' arrangements brought a welcoming, 'cosmopolitan' feel, to the area with the reduction in rows of parked cars and the new street trading furniture adding to the aesthetics of this seafront location and contributing to this Council's and the National Government's desire to better protect the environment by reducing reliance on the private motor car. In contrast, others raise their serious concerns about noise, odours, parking loss, alcohol related anti-social behaviour and the increase in visitor numbers. It is therefore clear that there are very differing views, and this has been reflected in the proposed approach as set out in the body of this report.
- 2.5** In order to have clarity as to what the long term public realm and trading arrangements should be for the Esplanade it is suggested that a comprehensive public engagement and consultation exercise be undertaken to establish views on a range of options for the area. These options could include: withdrawing all highway trading opportunities, continuing as they are, removing parking bays and constructing footway buildouts for traders to trade externally on land closest to their facilities with pedestrians guided around the trading areas and not through them, improved public transport options from various car parks (Cliff Top, Cosmeston Country Park), providing park and ride arrangements, land trains, speed restrictions, road closures, either permanent or for a number of days per year, market and outdoor event opportunities.
- 2.6** Further, without the full and detailed opinions of residents, traders, visitors, the Town Council and other interested parties on the long-term future of the public realm and trading arrangements on the Esplanade, there is risk in taking any decisions now that could damage the summer trade of existing established traders at this location, as they may no longer be in operation should the general consensus be that this external trading arrangement should continue in whatever form.
- 2.7** Cabinet is therefore requested to agree to the Director of Environment and Housing exercising his delegated powers, in consultation with the Monitoring Officer/ Head of Legal and Democratic Services, to grant renewal of the 4 carriageway temporary trading licences on a month by month period from 1<sup>st</sup> July, 2022. It should be noted that this approach would allow the termination of the license at any time if the engagement and consultation exercise indicate a preferred approach prior or if evidence suggests that the licence should be

terminated for other reasons, such as instances of anti-social behaviour or concerns over the way in which the area is managed.

- 2.8** The licences would be on similar terms and conditions to those existing with certain improvements to the street furniture used at the various locations required to improve the aesthetics of each outdoor space. It is proposed that the details of this be delegated to the Director of Environment and Housing.
- 2.9** The month by month licence period is suggested to allow a full and comprehensive public consultation to take place.
- 2.10** Should the public consultation exercise result in Cabinet taking a decision to withdraw external trading on the Esplanade, then the licences could be terminated within that month by month period. All the businesses concerned would be advised of this position on commencement of their new licences on 1<sup>st</sup> July, 2022.
- 2.11** Consideration has been given to enforcing the cessation of the current licenses at 30 June 2022 pending the carrying out of consultation and engagement. However, this would appear inappropriate given that the peak period for trading and the calls for alfresco dining would be at its highest during the summer. It is also worth noting that the licence does provide the Council with a level of control over the manner in which the licensed area is managed and operated, as set out in more detail in paragraph 2.13 below.
- 2.12** In considering this matter, Cabinet is asked to note some additional information, as follows. Most ‘on sales’ alcohol licences automatically became ‘off sales’ licences premises due to the Business and Planning Act 2020, and this additional provision does not end until 30<sup>th</sup> September, 2022. Whilst Penarth Esplanade and Barry Island are both areas covered by a Public Space Protection Order (PSPO), permitting authorised officers to confiscate alcohol held or being consumed on the street if those officers believe the alcohol to have a relationship to anti-social behaviour, this PSPO does not ban drinking alcohol in the open air at these locations, but only when anti-social behaviour linked to drinking can be demonstrated.
- 2.13** Should the 4 ‘on carriageway’ highway trading licences be terminated on 30<sup>th</sup> June, 2022 as previously planned, there is nothing to stop alcohol being sold by these premises and then consumed on the street, at least until 30<sup>th</sup> September, 2022. With no designated external trading space for these businesses, there is little that Council officers or the police will be able to do to designate such activities to specific areas. The trading licence however provides for this, whilst also giving Council Officers the power to rescind the licence should the operations be contrary to the licence terms and conditions.
- 2.14** A further point of note is the increased wish to dine outdoors due to heightened public fears about communicable diseases. Even accounting for the often unpredictable weather in this country, the desire for outside dining and drinking arrangements is greater than it was prior to the pandemic. The renewal of the four carriageway licences referred to, albeit temporarily whilst longer term options are considered, provides for greater consumer choice at these busy locations.

- 2.15** It should also be noted that as part of the significant investment in the Esplanade, permanent 'build outs' have been provided in other locations along the Esplanade. The proposal to engage with all interested parties allows for this option to be considered elsewhere along the Esplanade.
- 2.16** In terms of the participation intended, it is recommended that this includes a full consideration of options for the future of the Esplanade relating not only the options for external trading, but also other options including transport links, events, traffic management and associated public realm. Options include the holding of engagement events at the pier pavilion, where options can be discussed and debated, the involvement of the Town Council, residents, businesses and any visitors with an interest in the future of the Esplanade. As well as communicating the engagement and consultation approach with all interested parties, the holding of workshop style events run with a community mapping style approach would be extremely useful to understand the views of all those with an interest. The use of social media to garner views and opinions will also be considered as part of the participation exercise.

### **3. How do proposals evidence the Five Ways of Working and contribute to our Well-being Objectives?**

- 3.1** Looking to the long term: The Policy for placing equipment on the highway always sought to achieve a balanced enhancement of the street scene environment, ensuring it was clean, attractive, and well managed. It is a sustainable arrangement that benefits businesses pending the participation process, whilst also protecting users of the public highway.
- 3.2** The effective control of equipment on the highway contributes towards the prevention agenda by assisting in improving accessibility and supporting our town centres, preventing, or reducing risk of harm to residents in the local community and providing a wider beneficial impact to the environment. It also balances short-term needs to maintain good highway infrastructure whilst contributing to the longer-term policy of promoting economic growth and reducing future impact on local communities.
- 3.3** We listen to our stakeholders and customers and work with them to establish the size and design of the trading space. Each business has very different requirements and all are treated fairly. In the case of this report, we are suggesting that there are many competing views, in respect to the continuation of a small number of highway trading licences that need to be fully and better understood before any longer term decisions should be taken on external trading arrangements.
- 3.4** Throughout the whole process of agreeing items to be placed on the footway, the Highway Maintenance team has worked both virtually and on site with Cabinet members, officers in Neighbourhood Regeneration team and officers in Legal Services. Collectively the actions and detailed discussion by all those involved has successfully allowed the issuing of licences for many across the Vale

of Glamorgan ensuring that the Council can successfully continue to work towards the delivery of its identified wellbeing objectives.

- 3.5 Prevention: One of the purposes of the “Policy for placing equipment on the Highway”, was for the Highway Maintenance team to better manage and control equipment placed on the adopted highway asset, also ensuring equipment was of the permitted design and quality. The Policy also aims to promote businesses and add interest and attractiveness to the retail setting across the Vale of Glamorgan.
- 3.6 The wellbeing objectives identified above are fully compatible with the Council’s Corporate Plan.

## **4. Climate Change and Nature Implications**

- 4.1 As part of the public engagement and consultation process mass forms of transport, active travel and transportation in general, including parking, will be reviewed. The Public engagement exercise will allow all parties with an opportunity to consider the Council’s Project Zero objectives when assessing the future of the Esplanade and how public realm should be designed alongside arrangements for car parking.

## **5. Resources and Legal Considerations**

### **Financial**

- 5.1 The financial implications from this report are minimal. Fees from any renewed licences will assist in contributing towards the costs of the licencing service, including site visits and administration.

### **Employment**

- 5.2 The continuation of trading licences allows the businesses concerned to operate over a larger area during, what has historically been, their busiest periods and this should have a positive impact on local employment.
- 5.3 In addition, if licences are renewed this should help to ensure the continued viability of the businesses concerned.

### **Legal (Including Equalities)**

- 5.4 The Council has a duty to maintain the Highway pursuant to the Highways Act (1980).
- 5.5 Under relevant legislation the Council is permitted to charge for certain services it provides. Full details of the relevant legislation on fees and charges is contained in the Income Generation and Commercial Opportunities Strategy.
- 5.6 Permissions to use the highway for outdoor trading and furniture are granted by the issue of permits by the Council as the Highway Authority under Section 115E of the Highways Act 1980. Tables and chairs placed on the highway without

permission are an illegal obstruction and the Council will take enforcement action in such cases.

**5.7** The Highways Act 1980 deals with the management and operation of the road network in England and Wales. Permits are granted under Part VIIA (Provision of Amenities on Certain Highways), Section 115A-115K of the Highways Act 1980. 'Highway' is defined by S115A of the 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
- a local Act walkway.

**5.8** Section 115B-D refer to the provision of services etc. by Councils, whereas Section 115E allows for a council to grant permission to others to use objects or structures on, in or over a highway for the following purposes: (i) for a purpose which will result in the production of income; (ii) for the purpose of providing a centre for advice or information; or (iii) for the purpose of advertising.

**5.9** Section 115F, provides that a council may grant a permission upon such conditions as they think fit, including conditions requiring the payment to the council of such reasonable charges as they may determine (being such charges as will reimburse the council their reasonable expenses in connection with granting the permission).

**5.10** Under Section 115G, a council shall not grant any permission under section 115E unless they have first published a notice under this section specifying a period (being not less than 28 days after the publication of the notice) during which representations regarding the proposal may be made to the council.

**5.11** Section 115J states that consent may not be unreasonably withheld but may be given subject to any reasonable conditions. If consent is unreasonably withheld, or is subject to unreasonable conditions, then it can be referred for arbitration.

**5.12** Section 115K refers to the enforcement of the terms of the conditions: the Council may serve notice requiring the permit holder to take steps to remedy the breach within specified timescales. If this is not complied with, the Council may undertake the steps themselves and recover their costs in so doing.

## **6. Background Papers**

None.



Vale of Glamorgan Council -  
Policy for placing equipment on the Highway

Temporary Trading Area

Advertising boards

Scaffolding

Skips

## **Introduction:**

This policy is intended to help individuals understand the permissions needed from the Council and how applications will be assessed for items such as:

- Temporary Trading Areas – tables and chairs, benches or outside trading of goods
- Advertising boards
- Scaffolding
- Skips

Although each application will be considered on its merits this policy contains key points which must be considered in every case.

Vale of Glamorgan Council supports and encourages the provision equipment on the highway asset, as they make a positive contribution by adding vitality, colour, life and interest to the street scene. They can help maximise the use of public spaces, aid the local economy and add to the facilities offered to people who visit, live, and work in the Vale of Glamorgan.

Whilst the highway maintenance team encourage this, it is important that they are properly administered and managed to ensure that they meet the high standards expected in Vale of Glamorgan Council. They should not obstruct the footway or create a hazard for pedestrians, especially for blind, partially sighted and other footway users, likewise for the purpose of advertising boards, also known as A frame boards., these cannot obstruct the free flow movement of adopted footway and the impact of traders using the outside trading space needs careful consideration.

Council officers will also be pleased to offer advice with your application with queries being submitted to [highwaymaintenance@valeofglamorgan.gov.uk](mailto:highwaymaintenance@valeofglamorgan.gov.uk).

## **Legislative requirements:**

For the purpose of this policy, outdoor trading areas and pavement cafés are considered to be tables and chairs placed on the footway where food and drink can be consumed by customers, however the same process applies for outside trading space on the adopted asset for advertising boards.

Before agreeing a licence for of outdoor trading areas and pavement cafés on a footway, the Council must ensure that the public's rights to use the footway are not detrimentally affected.

## **Consultation:**

Before issuing any outdoor trading area or advertising board license, the Vale of Glamorgan Council have a statutory duty to consult the neighbouring properties and obtain the consent of all frontages with an interest, including publicly displaying a plan of the proposal for 7 calendar days. It is therefore advisable to speak to your neighbours regarding your proposal before submitting the application to the council.

Objections are dealt with through the Vale of Glamorgan Council, Highway Maintenance inbox [highwaymaintenance@valeofglamorgan.gov.uk](mailto:highwaymaintenance@valeofglamorgan.gov.uk).

### **Permissions required:**

Goods for sale, advertising boards, tables and chairs, skips and scaffolding placed on the adopted asset, such as footway and without permission are an illegal obstruction and no items are to be placed on the adopted asset until permission has been granted by the Vale of Glamorgan Council.

The Council will take enforcement action in such cases and this may compromise the application.

### **Processing of application:**

As each application is different, then the time taken to process them will inevitably vary. In general, it is estimated that it will take approximately one month or less to process an application for outside trading area or advertising boards from its receipt to issuing licence. The application process will be expedited if your proposal complies with the good practice procedures contained in these guidelines, and your application is accompanied by all the required supporting information.

### **Insurances:**

The Council will require the licensee to evidence appropriate third-party public liability insurance in the sum of at least £5,000,000.

### **Administration fines:**

An admin fine of £100 plus the original licence fee will be applied where failure to obtain permission is sought from the Vale of Glamorgan Council.

### **Annual Fee Structure:**

#### **Street Café Licence – Annex 01:**

Charges are applied annually and will run from the date of issue for 365 days for outside trading areas. It is the responsibility of the licensee to pay the fee annually and the licence does not automatically renew.

- 1 – 2 tables with up to 8 chairs / seats - £150 per annum (or £12.50 per month)
- 3 – 4 tables with up to 16 chairs / seats - £300 per annum (or £25.00 per month)
- 5 -10 tables with up to 40 chairs / seats - £500 per annum (or £41.67 per month)
- 11+ tables with over 40 chairs / seats - £750 per annum (or £62.50 per month), plus £35 (£2.91 per month) for every extra chair/ seat over 40

For the purpose of the fee, a standard bench equals 3 seats.

For the purpose of the fee, a traditional picnic table equals 1 table and 4 seats

These costs include a maximum of 1 advertising board within the space.

Permissions to use the footway for outdoor trading areas are granted under Section 157 of the Highways Act (1980).

### **Outside trading area for the sale of goods – Also included in Annex 01:**

Under 5 square meters - £150 per annum (or £12.50 per month)

Over 5 square meter - £300 per annum (or £25.00 per month)

These costs include a maximum of 1 advertising board within the space.

Outside trading area to be no greater than 10 square meters on the adopted footway.

### **Advertising boards - Annex 02:**

Charges are applied annually and will run from the date of issue for 365 days for advertising boards. It is the responsibility of the licensee to pay the fee annually and the licence does not automatically renew.

An application for advertising board costs £100 each with a maximum of **two** advertising boards per business. This includes any permitted under the outside trading space.

Permissions to use the footway for outdoor trading areas are granted under Section 157 of the Highways Act (1980).

### **Scaffolding on the highway – Annex 03:**

Vale of Glamorgan Council's charges **£102.40** for applications to erect scaffolding on the highway and the charge applies for 28 days. It is the responsibility of the licensee to pay the fee annually and the licence does not automatically renew.

Contractors **must** understand and agree to the Terms & Conditions in Appendix 03. The Vale of Glamorgan Council may cancel any licence that has been granted for failure to comply with the Terms & Conditions.

The application must be received at least 24 hours before it is intended to erect scaffolding to which this application relates.

Permissions to use the footway for scaffolding are granted under Section 169 and 172 of the Highways Act (1980)

### **Skips on the highway- Annex 04:**

Vale of Glamorgan Council's charges **£61.40** for applications to deposit builders skips on the highway. Contractors **must** understand and agree to the Terms & Conditions in Appendix 04. The Vale of Glamorgan Council may cancel any licence that has been granted for failure to comply with the Terms & Conditions.

The application must be received at least 24 hours before it is intended to deposit the skip or skips to which this application relates. The skip(s) will be deposited directly outside the place of work and will not be placed in areas with parking restrictions such as residential/permit parking zones, double yellow lines, unless formally agreed by a Highway Inspector in advance of skip being sited.

Permission may be granted under Section 139 and 140 of the Highways Act 1980 and contractor is **not** to site the skip until permission has been granted by Vale of Glamorgan Council.

## **Street Café Licence & Outside trading area for the sale of goods – Annex 01**

The Vale of Glamorgan Council has introduced Terms and Conditions for the provision of Trading Areas for Food and Beverage on highway to apply from 1<sup>st</sup> July 2021 onwards.

1. Any business applying for outside trading space must have public liability insurance in the sum of £5,000,000 in respect of any one event and a copy of this insurance must be produced to the Council before a licence would be considered.
2. All existing Trading Areas or Street Café licences on highway or other locations previously agreed and in place will be suspended from 31<sup>st</sup> March 2020 until further notice.
3. Temporary trading areas for food and beverage will only be permitted to cafes, restaurants, public houses or other catering establishments that serve food and drink within the premises.
4. Activity in the outside space must conform to the terms and conditions of the premise trading licence relevant to the business making the application. No joint applications will be permitted.
5. Any temporary allocation of a trading area or outside space must be proportionate to the existing business operation and any internal space within the business premises.
6. Where approved, any barriers, fencing, hoarding, furniture or other apparatus may only be placed on the highway within the agreed licensed area which will be marked out with road pins and/or spray paint by the Council or their designated representative.
7. The times of operation for any outside space will generally only be permitted between 8am and 10pm daily (local restrictions may be imposed depending on location and specific circumstances). No equipment will be permitted to be stored on the highway outside of the agreed operating hours.
8. The Council's bye-laws and Public Space Protection Orders (where appropriate) as well as all other relevant policies and standards shall be complied with at all times for health, safety and environmental reasons.
9. Premises will be required at all times to operate within the assigned space when trading and strictly comply with the guidance provided by the Welsh Government for a phased reopening of the Tourism and Hospitality business.
10. All businesses that are licensed to sell alcohol will be responsible for ensuring that no drinking takes place outside of their marked licensed area as referred in clause 5 above.
11. The temporary outside area boundary of any allocated space must not impact or encroach on the safe social distancing measures to any adjacent public footway or thoroughfare as required to reasonable comply with the Welsh Government's guidelines and legislation.
12. As part of the application process, the business owner shall submit sufficient details in an appropriate format, including plans as necessary, to demonstrate how any temporary

allocation of outside space can be managed and demarcated to meet the required social distancing requirements in a safe manner.

13. No approval for a temporary trading area or allocated outside space will be considered or permitted which detrimentally impacts or conflicts with the Council's Town Centre recovery plans.
14. No music or public broadcasting of any events whatsoever will be permitted at any time within any approved temporary trading areas or outside space
15. The approval of any temporary allocation of trading areas or outside space will be considered by a 'Permitting Panel' comprising relevant officers to consider each application and grant all new licences. The authorisation of any temporary licences will be determined by the Director of Environment (the authorising officer) and the Head of Legal and Democratic Services. The decision of the authorising officer is final.
16. The granting of any temporary trading area or allocated outside space for food and beverage does not imply an exclusive right to the area. The Council reserves the right to gain access to the area for cleaning, repairing and maintaining the highway or street furniture. The Council therefore reserves the right to suspend the permission temporarily if, for any reason, it becomes necessary and to facilitate emergency access by Statutory Undertakers for the maintenance and repair of their equipment.
17. All fees associated with application and licensing of any temporary trading area or allocated outside space will be waived for the period 27<sup>th</sup> July 2020 to 31<sup>st</sup> January 2021 to assist Cafés and Restaurants etc. in the recovery phase. All costs associated with complying with the terms and conditions to implement and maintain external allocated space shall be borne by the business premises making the application.
18. All allocated outside space shall be swept and kept clear of all litter and refuse by the applicant. Spillages and breakages, especially of glass and crockery, should be cleared up immediately. The temporary trading area for food and beverage should be thoroughly washed down at the end of each trading day and all discarded cigarette stubs must be cleared.
19. All furniture used for temporary trading areas for food and beverage shall be safe and in good condition designed for commercial use and comply with:  
  
BS EN 16139:2013 Test level 1 – 'Furniture – strength, durability and safety requirements for non-domestic seating'.  
  
BS EN 15372:2008 Test level 2 – 'Furniture – strength, durability and safety requirements for non-domestic tables'.
20. All temporary barriers, fencing or hoarding used to enclose or demarcate the temporary trading area or allocated outside space shall be provided by the applicant and be of a portable type with an appropriate tapping rails and adjustments for the safety of disabled persons. They shall be stable and sturdy with no protruding parts and contain no

advertising other than the name of the premises which holds the licence. They must not be used to advertise services or products sold.

21. Parasols, when opened, should be safely secured and contained entirely within the boundaries of the allocated outside space or temporary trading area with a clear height of 2.3m with no elements extending outside the marked boundaries to ensure they do not cause an obstruction or present a danger.
22. Emergency exit routes from your own and adjacent buildings should not be obstructed by the temporary trading area or allocated outside space and emergency service vehicles must have access along all streets at all times, even in pedestrianised streets or areas.
23. The needs of other users of the highway will be taken into account e.g. pedestrians, tradespeople, adjacent businesses when considering any temporary trading area or allocated outside space. The safe use of adjacent footways or pedestrian areas will take precedence over any request for temporary trading area or allocated outside space when considering applications.
24. The temporary trading area or allocated outside space for food and beverages should generally occupy an area directly in front of the premises and be visible from the main business premises or staff supervised at all times of operation.
25. The responsible person for the temporary trading area for food and beverage of each premises (of who the signature is given in agreement to these conditions) will be required to indemnify the Council against all actions, demands, costs, charges or expenses arising from using the highway under the permission granted.
26. Any defects or damage to the Highway need to be reported to the Highways Department immediately regardless of cause. The cost of rectifying any damage to the highway surface or to street furniture caused by any activity connected with the temporary trading area for food and beverage operation may be recharged to the premises.
27. The Council will carry out periodic inspections to make sure that all the terms and conditions of temporary trading area for food and beverage are being adhered to.
28. The Council reserves the right to suspend or revoke any permission or licence associated with temporary trading areas or allocated outside space should businesses breach these terms and conditions or any licence agreement without notice or recourse to appeal.
29. Anti-social behaviour within or associated with any temporary trading areas or allocated outside space will not be tolerated and will also result in suspension or revocation of any permission or licence without notice or recourse to appeal and with no opportunity for re-application until 1st October 2020.
30. If you wish to serve alcohol for consumption in the temporary trading area for food and beverage, you will need a premises licence which allows for OFF sales and consumption in that defined area. A premises licence can be applied for or varied through the local licensing authority.

31. Agreement to these conditions does not give any claim to the same provisions if and when a street café licence is applied for in future. Such licences will be required in future to be able to trade on the highway once the temporary measures within these terms and conditions end. Sufficient notice will be given for such licences to be applied for (and the relevant consultation period) before the end of these temporary measures.
32. Any furniture on the Public Highway after the end of the agreement will be removed by the Vale of Glamorgan Council. Under Section 137 of the Highway Act 1980, if any person, without lawful authority or excuse, in any way wilfully obstructs the free passage along a highway he is guilty of an offence and liable to a fine not exceeding level 3 on the standard scale.
33. These terms and conditions may vary to accommodate change in circumstances, legislation or guidance produced by Welsh Government and Vale of Glamorgan policies and procedures at any time during the agreed licence period.
34. Subject to approval and granting of any temporary trading area or allocated outside space by the authorising officer each business will be required to sign a declaration agreeing the licence terms and conditions as appropriate.
35. No floor coverings are to be used to personalise the outside trading area, such as artificial grass.

#### **Parklet areas for Food & Beverage**

36. Where Parklet's have been provided by the Authority, the licensee is responsible of all maintenance costs, ensuring that general maintenance and appearance is kept to a high standard throughout the duration of the licence, including when damage is caused through vandalism.
37. Furniture left out on Parklets outside of trading hours is the responsibility of the business owner and owner are liable to ensure that items are safe and secured when not in use.
38. No trailing cables to be laid on across the adopted footway providing electricity to the freestanding Parklet. Overhead cables subject to approval providing sufficient detail is provided to the Highway Maintenance Manager. Any overhead cables are to have a minimum of 2.3m clearance.
39. No bottled gas heaters to be permitted on the Parklet unit.

## Advertising boards - Annex 02:

### **Section 137(1) of the Highways Act 1980 states that:**

*“If a person, without lawful authority or excuse, in any way wilfully obstructs the free passage along a highway they are guilty of an offence and liable to a fine not exceeding £1,000.”*

Lawful authority is granted by the Local Authority (in this case Vale of Glamorgan Council) as the Highways Authority by means of a licence.

### **Section 149 of the Highways Act 1980 states that:**

*“(1) If any thing is so deposited on a highway as to constitute a nuisance, the highway authority for the highway may by notice require the person who deposited it there to remove it forthwith and if he fails to comply with the notice the authority may make a complaint to a magistrates’ court for a removal and disposal order under this section.*

*(2) If the highway authority for any highway have reasonable grounds for considering— (a) that anything unlawfully deposited on the highway constitutes a danger (including a danger caused by obstructing the view) to users of the highway, and (b) that the thing in question ought to be removed without the delay involved in giving notice or obtaining a removal and disposal order from a magistrates’ court under this section, The authority may remove the thing forthwith.”*

1. There is a maximum of **two** advertising boards per premise. If more than two advertising boards are placed on the highway then this is a breach of the terms and conditions so any licences that have been obtained will be revoked with no right to appeal.
2. Any business applying for advertising board must have public liability insurance in the sum of £5,000,000 in respect of any one event and a copy of this insurance must be produced to the Council before a license would be considered.
3. The application for advertising boards last for one year and renewal is not automatic and is the business owner responsibility to ensure they renew the licence. Failure to do so will result in the advertising board being removed from site and destroyed after **28 days**.
4. Where approved, advertising boards may only be placed on the highway within the agreed licensed area which will be marked out with road pins and spray paint by the Council or their designated representative.
5. The Council’s bye-laws and Public Space Protection Orders (where appropriate) as well as all other relevant policies and standards shall be complied with at all times for health, safety and environmental reasons.
6. No approval for advertising boards will be considered or permitted which detrimentally impacts or conflicts with the Council’s Town Centre recovery plans.
7. The approval of any advertising boards will be considered by a Highway Maintenance Manager or appointed officer. The decision of the authorising officer is final.
8. The granting of advertising boards does not imply an exclusive right to the area. The Council reserves the right to gain access to the area for cleaning, repairing and maintaining the highway or street furniture. The Council therefore reserves the right to suspend the permission temporarily if, for any reason, it becomes necessary and to facilitate emergency access by Statutory Undertakers for the maintenance and repair of their equipment.

9. Emergency exit routes from your own and adjacent buildings should not be obstructed by the advertising board and emergency service vehicles must have access along all streets at all times, even in pedestrianised streets or areas.
10. The needs of other users of the highway will be taken into account e.g. pedestrians, tradespeople, adjacent businesses when considering any temporary trading area or allocated outside space. The safe use of adjacent footways or pedestrian areas will take precedence over any request for temporary trading area or allocated outside space when considering applications.
11. The advertising boards should only occupy an area directly in front of the premises and be visible from the main business premises or staff supervised at all times of operation.
12. The responsible person for advertising boards (of who the signature is given in agreement to these conditions) will be required to indemnify the Council against all actions, demands, costs, charges or expenses arising from using the highway under the permission granted.
13. Any defects or damage to the Highway need to be reported to the Highways Department immediately regardless of cause. The cost of rectifying any damage to the highway surface or to street furniture caused by any activity connected advertising board may be recharged to the premises.
14. The Council will carry out periodic inspections to make sure that all the terms and conditions of advertising boards are being adhered to. Any breaches in conditions could result in advertising board being removed from site without notice.
15. Any furniture on the Public Highway after the end of the agreement will be removed by the Vale of Glamorgan Council. Under Section 137 of the Highway Act 1980, if any person, without lawful authority or excuse, in any way wilfully obstructs the free passage along a highway he is guilty of an offence and liable to a maximum of £1,000 fine.
16. These terms and conditions may vary to accommodate change in circumstances, legislation or guidance produced by Welsh Government and Vale of Glamorgan policies and procedures at any time during the agreed licence period.
17. Subject to approval and granting of any temporary trading area or allocated outside space by the authorising officer each business will be required to sign a declaration agreeing the licence terms and conditions as appropriate.
18. Advertising boards are to be removed by the business outside of trading hours. Any advertising boards left outside of these hours will be removed and an administration charge of £100 will apply for the applicant to collect the item from The Alps Depot, Quarry Road, Wenvoe, CF5 6AA.
19. No trailing cables to be laid on across the adopted footway providing electricity to the advertising board.

20. At all times there must be a minimum of **1.2 metres** unobstructed space from the furthest limits of the advertising board. This distance allows for the free flow of highway users as well as providing enough space for those with mobility assistance vehicles or those using walking aids or other items that require a larger amount of space such as buggies.
21. Advertising boards are not permitted to be placed on the carriageway or in parking bays or places or other areas specifically designed for use by vehicles. They must not be placed next to pedestrian crossings and must not be placed on or near tactile paving. Tactile (bumpy) paving is there to guide the visually impaired to safe crossing points. Care should always be taken when placing an advertising board that it also does not interfere with street furniture and that the clear pedestrian route is also maintained when street furniture is present.
22. Where exceptional circumstances apply written permission may be granted by the Council to deviate from this rule, where it is satisfied that the granting of such permission will not cause an obstruction or present difficulties to members of the public, especially those with disabilities of any kind.
23. Advertising boards must at all times remain fully upright and in good condition. Advertising boards should therefore remain visible from inside of the building so that the licence user can ensure that this is the case. If an advertising board has fallen over then the potential hazard it can cause increases significantly and any fallen over advertising board will therefore be considered as a dangerous obstruction.
24. Under section 132 of the Highways Act 1980, no person shall affix to the highway and picture, letter, sign or other mark upon the surface of the highway or upon any tree, structure or works without express permission of the Council. The terms and conditions prohibit advertising boards from being fixed in any permanent or semi-permanent way. Excavation of the highway of any kind undertaken to secure an advertising board is strictly prohibited under any circumstance. Any person identified as breaching section 132 of the Highways Act may be liable to a Fixed Penalty Notice or prosecution in the magistrates' court.
25. All advertising boards in Vale of Glamorgan must be between maximum of 700mm wide and, from the base of the board, no more than 1000mm high. Advertising boards that are too small may not be noticed by members of the public causing a trip hazard and advertising boards that are too large can cause serious injury if they fall. For this reason any advertising board observed that is either smaller or larger than the permitted sizes will be considered as a dangerous obstruction.
26. Advertising boards and swinging advertising boards within Vale of Glamorgan are prohibited. This means that, from any direction of travel, there must only be one single foot touching the pavement or footway with no space for a walking aid or object to pass underneath the board.

**For illustrative purposes only:  
Prohibited**



**Permitted**



27. The materials that the board can be made of are not affected, for example boards could still be made out of wood or metal provided they have a single foot meeting the floor line and are sturdy and secure.
28. It is the responsibility of the business owner in charge of the advertising board to ensure that it is correctly licenced and is only being used lawfully and is safe. The only exception to this is when the company is a Ltd. company when in which case it would be the company secretary.
29. Failure to adhere the terms and conditions of the licence that has been granted presents a safety hazard the Council and its authorised officers will operate a zero tolerance approach to any breaches of the terms and conditions or legislative requirements. Any advertising boards observed in breach of the terms and conditions will be investigated and appropriate action taken.
30. All advertising boards must adhere to the Equalities Act 2010 and must not promote or contain material that may considered to be discriminatory, cause offence or promote harassment or victimisation. All advertising boards must not discriminate against any person on the basis of age, disability, gender reassignment, marriage or civil partnership status, race, religion or belief, sex or sexual orientation. This list is not exhaustive and the Council reserves the right to take action where any advertising board could be considered to be in breach of the Equalities Act 2010 or can be considered to be inappropriate or may cause offence.
31. Where an authorised officer is of the opinion that an advertising board is hazardous then the Council may immediately remove the advertising board to be stored for **28 days** at the owner's expense. **28 days** storage fee is set at £100 and failure to collect the board and pay the relevant fees within this timeframe will result in the board being destroyed and all costs recoverable from the business owner.

32. In any other circumstance an authorised officer will give notice to the person appearing to be in charge of the advertising board requiring the removal of the advertising board from the highway. This notice must be complied with otherwise further enforcement action may be started or a court order sought to carry out the notices demands.
33. As advertising board offences are criminal rather than civil, prosecution is normally carried out through the Magistrates' Courts.
34. Licences are non-transferable.

### **Scaffolding on the highway – Annex 03:**

1. No scaffolding or hoarding work will commence on the public highway without a duly authorised licence and payment of the correct fee, the application must be submitted a minimum of 5 working days in advance of the works commencing, longer application periods will be required, and additional restrictions may also be necessary where other factors affect the proposed site, traffic sensitivity, restricted working hours, restricted site access, pedestrian areas, shopping areas etc.
2. All scaffolding shall be securely erected on the day of delivery, by or under the supervision of a competent and experienced person in carrying out such work.  
There shall be no surplus materials remaining on site unless within a fenced off area, also all materials are to be removed from site on day of dismantle.
3. Public must be kept safe at all time during the erecting and dismantling of Scaffolding.
4. Scaffolding must be adequately lit at all time between half an hour before sunset and half an hour after sunset, and in fog.
5. Scaffolding to be kept back 450mm from edge of curb line up to a height of 5.5m.
6. Scaffolding closer than 450mm to the carriageway edge, or the proposed site of the scaffolding is particularly liable to impact damage by passing vehicles. In these circumstances adequately secured and properly signed and guarded and lit barriers shall be provided along the face of the structure. Generally accepted are water/sand filled plastic barriers (Road wall) shall be used on all main traffic routes.
7. Where pedestrians are diverted into the carriageway, a pedestrian walkway 1.2 metres minimum width shall be provided with a robust pedestrian barrier with handrail and tapping rail. Ramps of non-slip Material shall be used to aid mobility over raised kerbs.
8. Where appropriate pedestrian access must be maintained through the scaffold and the following conditions will apply: -
  - A. A minimum head clearance of 2.3 meters will be provided
  - B. All scaffolding below 2.3 meters, including base plates/boards, shall be adequately colour contrasted by using yellow foam with red and white bunting so that pedestrians will be warned of the presence of the scaffolding.
  - C. Scaffolding to be erected so that no ties or braces obstruct the highway below the height of 2.3 metres.
  - D. A minimum width of unobstructed footway of 1.5 metres shall be maintained in busy populated areas. A minimum of 1.2 metres may be acceptable in less populated areas. The width is required is required to enable wheelchair users or those with guide dogs to pass through safely.

- 9 The licensee must ensure that the lighting and guarding complies with Traffic signs manual Chapter 8. A requirement when carrying out any work on the highway is that the -works are adequately signed and guarded and lit as stipulated in the 'Safety at Street Works and Road Works code of practice' and is to the satisfaction of the Vale of Glamorgan council.
- 10 Scaffolding must not be obstructing any Utility services, bus shelters, post boxes, or emergency exits for any commercial or residential premises. They must also not obstruct any road sign plates.
11. Hoist or pulley wheels shall be adequately fenced off, and no load shall be raised or lowered over the highway unless there is adequate protection provided by licensee for the general public.
12. Suitable measures are to be taken to prevent highway user from being struck by falling debris, materials, tools or other objects. The first lift of each scaffolding must be close boarded and monoflexed then second layer of boards on top to prevent debris, materials or other objects falling onto the highway. Covered traffic routes or passageways must be provided where necessary. The scaffolding at all times MUST be adequately secured to the adjoining structure or any externally braced to prevent displacement including resisting high winds and any other extreme weather conditions.
13. When in an emergency situation and scaffolding needs to be erected out of hours, a scaffolding permit must be submitted the next working day and Highway Authority to be informed as soon as reasonably practicable.
14. All lower ladders shall be removed or locked covered with ladder lock when scaffolding is not in use to prevent unauthorised access.
15. The name, address, office telephone number and an 'Out of Hours' emergency contact telephone number of the scaffolding contractor shall be prominently displayed on a 'Scafftag' including the signature of the competent scaffold inspector, inspection date and time. Scaffolding must be inspected on a weekly basis and 'Scafftag' must be signed by a competent person and records kept by Licensee. Failure to inspect could result in third party contractor removal with all costs recoverable.
16. The licensee will be responsible for any damage caused to the Highway Authority assets and make good any damage caused. Scaffold standards shall be fitted with suitable metal baseplates, with timber base boards where necessary to protect the asset to the satisfaction of The Vale of Glamorgan Council.
17. A copy of the permit shall at all times clearly be displayed on site through the duration of the scaffolding is erected.
18. The Licensee's attention is drawn to the Health and Safety at work act 1974, Working at Height regulations 2005 and all relevant current legislation and Codes of Practice.

## **Penalty for non-observance**

Any damage to the highway the full costs of a repair shall be recovered by Vale of Glamorgan Council from the license holder.

- If you fail to comply to these Terms and Conditions and all relevant legislation you will be liable to enforcement action which includes Fixed Penalty Notice **Part IX of the Highways Act 1980 for Obstruction of a Highway.**
- Section 137 (Penalty for wilful obstruction) £100 Fixed penalty notice
- Section 137ZA Power to order offender to remove obstruction
- Section 169 Control of Scaffolding (Committing offence under this section) £100 fixed penalty
- Section 140 Removal of Builders' scaffolding (Power of removal and recovery of costs)
- Section 149 Removal of things so deposited on Highways as to be a nuisance etc. (Power for removal and recovery of costs)

## **Legal Indemnity**

The License holder shall indemnify, and keep indemnified, Vale of Glamorgan Council and/or its servants and agents against liability, from all claims, demands, actions, costs and damages arising out of buy or in consequence of the depositing of scaffolding on the carriageway, footway, or grass verge. The period of indemnity is to run from the commencement of the deposition until the final removal of the Scaffolding. The licensee must have in place public liability insurance. The sum covered by the policy to be £5,000,000 for any one event with a reputable insurer. Whenever required the Licensee shall produce to the Authority the policy, or policies of insurance and the receipts of the current policy.

#### **Skips on the highway- Annex 04:**

1. Each skip shall be clearly marked with the owner's name and 24 hour telephone number.
2. Each skip will be deposited on the carriageway/verge outside or adjacent to the location applied for, with adequate protection provided to verges and road surfaces and shall be positioned so that its longer sides are parallel to the edge of the carriageway and as near to the edge of the carriageway as is reasonably practicable but ensuring it does not impede the surface water drainage of the highway nor obstruct access to any manhole or any apparatus of any statutory undertaker of The Vale of Glamorgan Council.
3. Where more than one skip is on the highway at one time, the skips shall be positioned as closely as possible to each other, but not as to obstruct access to any premises unless prior approval has been obtained.
4. Each skip shall not exceed 5 metres in length and by 2 metres in width.
5. Each skip or group of skips placed on the highway shall comply with the following requirements;
  - a. Both ends of each skip shall be painted yellow and there shall be attached below and access the top edge of each end so as to be visible to traffic, strips of material the composition of which complies with Builders skip regulations 1984 in having red fluorescent and yellow reflecting diagonal stripes. The painting and the stripes of the material shall be at all times being kept clean and not obstructed by tarpaulins or any forms of sheeting.
  - b. When a skip is placed on the carriageway it shall be guarded by at least 3 traffic cones placed on the carriageway in an oblique line on the approach side of the skip. Where 2 or more skips are deposited in a row so that the distance between adjacent skips does not exceed 2 metres the row shall be guarded as if it were one skip.
  - c. At night (that is to say, between half-an-hour before sunset and half-an-hour after sunrise)
    - i. A yellow battery-operated lamp shall be placed against or attached to each corner of the skip, or at the end corners of a row or skips where 3 or more skips are to be deposited in a row and the distance between adjacent skips does not exceed 2 metres.
    - ii. When a skip is placed in a carriageway lamps shall be placed as in 5c) i) above and shall also be placed between each of the cones referred to in paragraph 5b) above. Each lamp shall have an illuminative power of not less than one candela and shall remain lit throughout the night.
6. No skip when standing in the highway shall contain any flammable, explosive, noxious or dangerous material which is likely to putrefy and which otherwise is, or likely to become, a nuisance to users of the highway.
7. No skip shall be used in such a way that any of its contents fall onto the highway, or that there is an escape of dust from the contents.

8. Each skip shall be removed for emptying as soon as practicable and in any case no later than 2 working days after it has been filled. All waste must be contained with debris netting to prevent discharge of waste on to the highway whilst in removal.
9. No skip shall remain on the highway pursuant to this permission after the permit has expired.
10. If applications are unable to be faxed or emailed for any reason, the applicant must contact The Vale of Glamorgan Council to make a verbal application; the application form can then be posted. It is the responsibility of the applicant to record all information on any verbal application.

### **Penalty for non-observance**

Any action taken by The Vale of Glamorgan Council to remedy a breach of these conditions, or to repair any damage, the full costs shall be recovered from the License Holder.

### **Legal Indemnity**

The License Holder shall indemnify, and keep indemnified, The Vale of Glamorgan Council and/or its servants and agents against any liability, from all claims, demands, actions, costs and damages arising out of by or in consequence of the depositing of skips on the carriageway, footway, or grass verge. The period of indemnity is to run from the commencement of the deposition until the final removal of the skips. The sum covered by the policy to be £5,000,000 for any one event with a reputable insurer. Whenever required the Licensee shall produce to the Authority the policy, or policies of insurance and the receipts for payment of the current policy.