

LICENSING COMMITTEE AGENDA

Wednesday, 10 July 2019 at 7:15pm

**Council Chamber, Braintree District Council, Causeway House,
Bocking End, Braintree, CM7 9HB**

THIS MEETING IS OPEN TO THE PUBLIC
(Please note this meeting will be audio recorded)

www.braintree.gov.uk

Members of the Licensing Committee are requested to attend this meeting to transact the business set out in the Agenda.

Membership:-

Councillor J Baugh (Chairman)
Councillor P Euesden
Councillor A Hensman
Councillor H Johnson
Councillor Mrs J Pell
Councillor R Ramage
Councillor S Rehman

Councillor B Rose (Vice-Chairman)
Councillor Mrs J Sandum
Councillor P Schwier
Councillor Mrs L Walters
Councillor Mrs S Wilson
Councillor B Wright

Members unable to attend the meeting are requested to forward their apologies for absence to the Governance and Members Team on 01376 552525 or email governance@braintree.gov.uk by 3pm on the day of the meeting.

A WRIGHT
Chief Executive

INFORMATION FOR MEMBERS - DECLARATIONS OF INTERESTS

Declarations of Disclosable Pecuniary Interest, Other Pecuniary Interest or Non-Pecuniary Interest

Any member with a Disclosable Pecuniary Interest, other Pecuniary Interest or Non-Pecuniary Interest must declare the nature of their interest in accordance with the Code of Conduct. Members must not participate in any discussion of the matter in which they have declared a Disclosable Pecuniary Interest or other Pecuniary Interest or participate in any vote, or further vote, taken on the matter at the meeting. In addition, the Member must withdraw from the chamber where the meeting considering the business is being held unless the Member has received a dispensation from the Monitoring Officer.

Question Time

The Agenda allows for a period of up to 30 minutes when members of the public can speak. Members of the public wishing to speak are requested to register by contacting the Governance and Members Team on 01376 552525 or email governance@braintree.gov.uk by midday on the working day before the day of the Committee meeting. For example, if the Committee Meeting is due to be held on a Tuesday, the registration deadline is midday on Monday, (where there is a bank holiday Monday you will need to register by midday on the previous Friday).

The Council reserves the right to decline any requests to register to speak if they are received after this time. Members of the public can remain to observe the public session of the meeting.

Please note that there is public Wi-Fi in the Council Chamber, users are required to register in order to access this. There is limited availability of printed agendas.

Health and Safety

Any persons attending meetings in the Council offices are requested to take a few moments to familiarise themselves with the nearest available fire exit, indicated by the fire evacuation signs. In the event of an alarm you must evacuate the building immediately and follow all instructions provided by officers. You will be assisted to the nearest designated assembly point until it is safe to return to the building.

Mobile Phones

Please ensure that your mobile phone is switched to silent during the meeting in order to prevent disturbances.

Webcast and Audio Recording

Please note that this meeting will be audio recorded only.

Documents

Agendas, reports and minutes for all the Council's public meetings can be accessed via www.braintree.gov.uk

We welcome comments from members of the public to make our services as efficient and effective as possible. If you have any suggestions regarding the meeting you have attended, you can send these via governance@braintree.gov.uk

PUBLIC SESSION

Page

- 1 Apologies for Absence**
- 2 Declarations of Interest**
To declare the existence and nature of any Disclosable Pecuniary Interest, other Pecuniary Interest or Non-Pecuniary Interest relating to items on the Agenda having regard to the Code of Conduct for Members and having taken appropriate advice where necessary before the meeting.
- 3 Minutes of the Previous Meeting**
To approve as a correct record the minutes of the meeting of the Licensing Committee held on 27th February 2019 (copy previously circulated).
- 4 Public Question Time**
(See paragraph above)
- 5 Application for a Pavement Permit – Picture Palace, Fairfield Road, Braintree, Essex, CM7 3HA** **4 - 20**
- 6 Disclosure and Barring (DBS) Update Service** **21 - 29**
- 7 Urgent Business - Public Session**
To consider any matter which, in the opinion of the Chairman, should be considered in public by reason of special circumstances (to be specified) as a matter of urgency.
- 8 Exclusion of the Public and Press**
To agree the exclusion of the public and press for the consideration of any Items for the reasons set out in Part 1 of Schedule 12(A) of the Local Government Act 1972.

PRIVATE SESSION

Page

- 9 Urgent Business - Private Session**
To consider any matter which, in the opinion of the Chairman, should be considered in private by reason of special circumstances (to be specified) as a matter of urgency.

Application for a Pavement Permit – Picture Palace, Fairfield Road, Braintree, Essex, CM7 3HA		Agenda No: 5
Portfolio	Environment and Place	
Corporate Outcome:	A sustainable environment and a great place to live, work and play A prosperous district that attracts business growth and provides high quality employment opportunities Residents live well in healthy and resilient communities where residents feel supported	
Report presented by:	John Meddings, Principal Licensing Officer	
Report prepared by:	John Meddings, Principal Licensing Officer	
Background Papers:		Public Report
<ol style="list-style-type: none"> 1. Application made by J D Wetherspoon with respect to Picture Palace, Fairfield Road, Braintree (Appendix 1) 2. Plan (Appendix 2) 3. Existing Pavement Permit issued by Braintree District Council (Appendix 3) 		Key Decision: No
Executive Summary:		
<p>To consider an application by J D Wetherspoon for a Pavement Permit for the use of the pavement area outside Picture Palace, Fairfield Road, Braintree. The Council's Pavement Permit Policy specifies that applications requesting hours beyond 18:00hrs will be referred to the Council's Licensing Committee for determination</p>		
Decision: To determine one of the the following options:-		
<ol style="list-style-type: none"> 1. To GRANT the application for a Pavement Permit. 2. To GRANT the application for a Pavement Permit for reduced hours than those detailed. 3. To GRANT the application for a Pavement Permit with additional conditions deemed necessary. 4. To REFUSE the application for a Pavement Permit. 		
Purpose of Decision:		
<p>Members of the Licensing Committee are requested to consider an application made by J D Wetherspoon with respect to Picture Palace, Fairfield Road, Braintree.</p>		

Corporate Implications	
Financial:	No implications arising from the report.
Legal:	Section 115E(1)(a) and (b) of Highways Act 1980.
Safeguarding:	No implications arising from this report.
Equalities/Diversity:	No implications arising from this report.
Customer Impact:	The decision made may have an effect on the applicant's business.
Environment and Climate Change:	No implications arising from this report.
Consultation/Community Engagement:	Application subject to a 28 day public consultation period in accordance with Braintree District Council's Pavement Permit Policy.
Risks:	No implications arising from this report.
Officer Contact:	John Meddings
Designation:	Principal Licensing Officer
Ext. No:	2213
E-mail:	John.meddings@braintree.gov.uk

1. Background

1.1 In February 2003, Members adopted the provisions under Section 115E(1)(a) and (b) of the Highways Act 1980 which empowers a Council to grant permission to local businesses that wish to use objects or structures on, in, or over a highway to which this part of the Act applies-

- (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 for the purpose of advertising

1.2 This effectively enables the Council to grant a permit for the use of tables and chairs on the public highway.

1.3 The Council's Pavement Permit Policy specifies that applications requesting hours beyond 18:00hrs are required to be determined by the Licensing Committee.

1.4 The application by J D Wetherspoon for a Pavement Permit for the Picture Palace, Fairfield Road, Braintree was received and validated on 18th April 2019. The Permit, if granted, will allow the following for a period of one year:

6 Tables
12 chairs

Monday to Sunday 09:00hrs to 20:00hrs

1.5 A plan of the area accompanies this report (Appendix 2).

1.6 This application has been submitted to allow for the continuation of an existing Pavement Permit issued to the premises.

There are no changes proposed in the application from that granted in the previous Permit.

2. Consultation

2.1 As part of the regulatory procedure, the Council must prepare a notice and arrange for it to be displayed in a clear position on the premises for a period of 28 days. In accordance with the Council's Policy, an Officer visited the premises and confirmed that the appropriate notice was displayed in a prominent position on the premises.

2.2 The Council must also identify and serve a notice on any "frontagers with an interest" and the owners and occupiers of any premises likely to be materially affected by the application.

2.3 As part of the consultation process, the Council must seek the consent of the Highway Authority (Essex Highways). Consent has been received from Essex Highways.

- 2.4 The Council's Pavement Permit Policy requires additional consultation to be carried out with the following bodies:

Braintree District Council

- Forward Plans
- Development Control
- Environmental Health
 - Health & Safety
 - Pollution
- Ward Members

Essex Police

Essex Fire and Rescue

3. Premises History

- 3.1 J D Wetherspoon Plc have held a Pavement Permit with this Authority since 23rd July 2014. At first application, the Authority received two objections. However, the Authority determined and granted the application as submitted.
- 3.2 The Authority has received no further objections at the annual renewal of the Permit.
- 3.3 The Authority received a complaint regarding the use of the tables and chairs by a member of the public on 16th March 2018. The complainant suggested that tables and chairs were being placed on the highway later than the Permit allowed.
- 3.4 As this was the first complaint of this nature since the issue of the first licence, a Licensing officer contacted the premises manager and confirmed the terms of the permit. The manager acknowledged the complaint and agreed to conform to the terms of the Permit. No further complaints have been received.

4. Miscellaneous

- 4.1 If the Permit is granted standard conditions will be attached.



Braintree
Application for a permit to place tables and chairs
on the pavement or road
Highways Act 1980, Section 115B /115E

For help contact
Licensing@braintree.gov.uk
 Telephone: 01376 557790

* required information

Section 1 of 9

You can save the form at any time and resume it later. You do not need to be logged in when you resume.

System reference	Not Currently In Use	This is the unique reference for this application generated by the system.
Your reference	ef.698	You can put what you want here to help you track applications if you make lots of them. It is passed to the authority.

Are you an agent acting on behalf of the applicant?

☐ Yes ☒ No

Put "no" if you are applying on your own behalf or on behalf of a business you own or work for.

Applicant Details

* First name	Emma
* Family name	Fallon
* E-mail	
Main telephone number	
Other telephone number	

Include country code.

☐ Indicate here if you would prefer not to be contacted by telephone

Are you:

☒ Applying as a business or organisation, including as a sole trader
☐ Applying as an individual

A sole trader is a business owned by one person without any special legal structure. Applying as an individual means you are applying so you can be employed, or for some other personal reason, such as following a hobby.

Applicant Business

* Is your business registered in the UK with Companies House? ☒ Yes ☐ No

* Registration number	1709784
* Business name	J D Wetherspoon plc
* VAT number	-
* Legal status	Public Limited Company

If your business is registered, use its registered name.

Put "none" if you are not registered for VAT.

Continued from previous page...

* Your position in the business

Home country

The country where the headquarters of your business is located.

Registered Address

Address registered with Companies House.

* Building number or name

* Street

District

* City or town

County or administrative area

* Postcode

* Country

Section 2 of 9

TYPE OF APPLICATION

Type of application : ☐ New ☒ Renewal

* Existing licence number

* Expiry date

Section 3 of 9

PREMISES FOR WHICH PERMISSION IS REQUIRED

* Name of premises/
trading name

Premises Address

Is the address the same as (or similar to) the address given in section one?

☐ Yes ☒ No

If "Yes" is selected you can re-use the details from section one, or amend them as required. Select "No" to enter a completely new set of details.

* Building number or name

* Street

District

* City or town

County or administrative area

* Postcode

* Country

Continued from previous page...

Contact Details

Are the contact details the same as (or similar to) those given in section one?

☒ Yes

☐ No

If "Yes" is selected you can re-use the details from section one, or amend them as required. Select "No" to enter a completely new set of details.

E-mail

* Main telephone number

Other telephone number

Further Details

* Type of business (e.g. pub, restaurant, café)

Public House

Section 4 of 9

OWNERSHIP OF THE PREMISES

* In what capacity do you occupy the premises?

☒ Freehold

☐ Leasehold

☐ Tenant

☐ Other

Section 5 of 9

OCCUPATION OF THE PAVEMENT / FOOTWAY

* Describe the area where you wish to place tables and chairs (a detailed plan must be attached with your application)

along the side of the Picture Palace

Give the dimensions of the area you wish to occupy in metres

* Length

11

* Width

1.2

* Give the total width of the pavement or footway at this location

2.7

OPENING TIMES

State the days and times you propose to place tables and chairs on the pavement

* Day or days

Monday to Sunday

* From

0900

* To

2000

Continued from previous page...

Add another day

* Do you plan to place tables and chairs on the pavement all year round?

☒ Yes

☐ No

Section 6 of 9

DETAILS OF FURNITURE

Provide details of all the furniture and other equipment you propose to place on the pavement. Check for local guidance notes and conditions - your responses may have to provide very specific information and you may be required to attach drawings or photographs with your application

Tables

* Number

6

* Description (e.g. dimensions, type, material, colour supplier/technical details, as appropriate)

timber top with steel frame

Chairs

* Number

12

* Description (e.g. dimensions, type, material, colour supplier/technical details, as appropriate)

timber with steel frame

Litter Bins

Number

Parasols/Umbrellas

Number

Planters

Number

Space Heaters

Number

Lighting

Number

Barriers/Balustrades

Number

7

* Description (e.g. dimensions, type, material, colour supplier/technical details, as appropriate)

post and canvas barrier

Other furniture or equipment

Continued from previous page...

Description (e.g. dimensions, type, material, colour supplier/technical details, as appropriate)

Further Details

* Where will these items be stored when not in use?

Inside the premises

* Arrangements for clearing and cleaning the pavement at the end of the day

A member of staff is allocated to supervise the area at all times it is in use and at the end of permitted hours two members of staff will stack the furniture and move inside the premises.

Section 7 of 9

PUBLIC LIABILITY INSURANCE

You must have a suitable level of public liability insurance to cover this activity – check local requirements.

* Do you have public liability insurance?

☒ Yes ☐ No

Provide details of the policy

* Insurance company	CNA Insurance
* Policy number	CA0003396
* Period of cover	31.07.18 to 30.07.19
* Amount of cover (£m)	10

Section 8 of 9

ADDITIONAL DETAILS

Provide any additional information which is required or relevant to your application (check for local guidance notes and conditions which may provide details of specific requirements in your area)

Renewal application

Section 9 of 9

PAYMENT DETAILS

This fee must be paid to the authority. If you complete the application online, you must pay it by debit or credit card.

This formality requires a fixed fee of £308

DECLARATION

•I have made or enclosed payment of the fee £263.00 ☒ •I have enclosed a copy of a location/layout plan Scale 1:100 showing the location of the tables, chairs and other items to be placed on the highway. •Confirmation from the Highways Records if the status of the application site ☒ •Evidence of public liability insurance •Other associated permissions i.e

Continued from previous page...

Planning and any appropriate licences under the Licensing Act 2003

☐ Ticking this box indicates you have read and understood the above declaration

This section should be completed by the applicant, unless you answered "Yes" to the question "Are you an agent acting on behalf of the applicant?"

* Full name

* Capacity

* Date / /
dd mm yyyy

[Add another signatory](#)

Once you're finished you need to do the following:

1. Save this form to your computer by clicking file/save as...
2. Go back to <https://www.gov.uk/apply-for-a-licence/ability-to-place-tables-and-chairs-in-the-road/braintree/apply-1> to upload this file and continue with your application.

Don't forget to make sure you have all your supporting documentation to hand.

OFFICE USE ONLY

Applicant reference number

Fee paid

Payment provider reference

ELMS Payment Reference

Payment status

Payment authorisation code

Payment authorisation date

Date and time submitted

Approval deadline

Error message

Is Digitally signed ☐

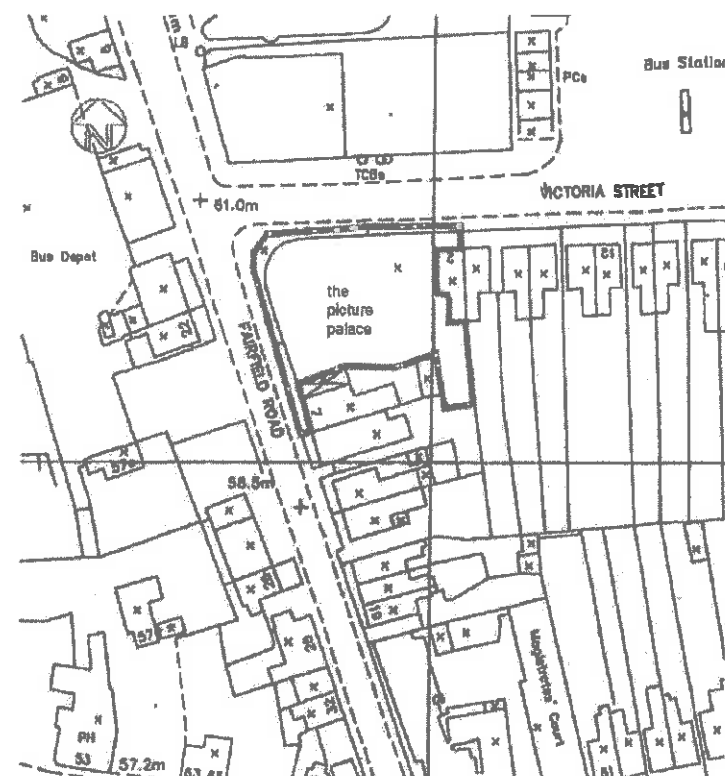
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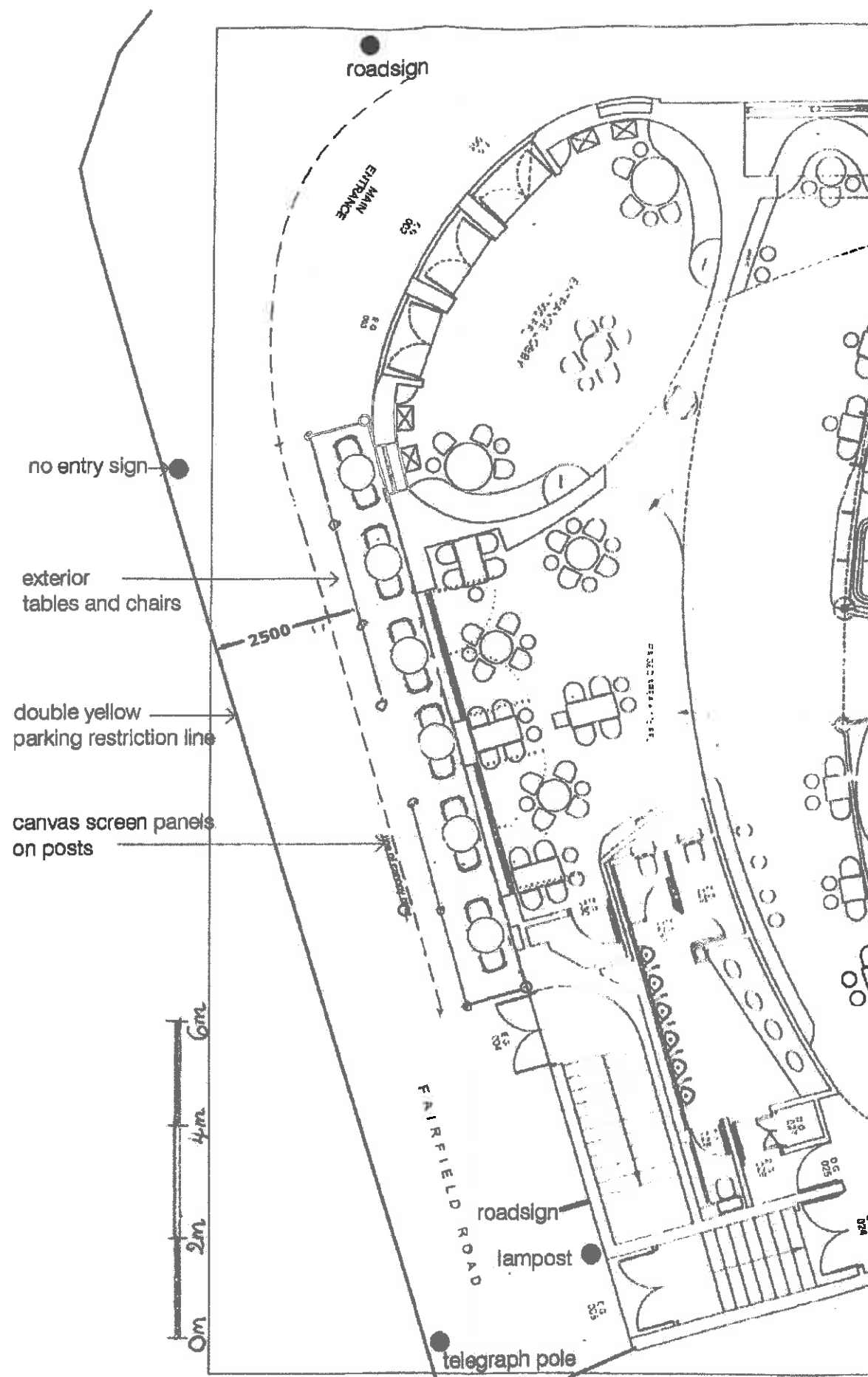
FRONT ELEVATION AT JUNCTION OF
FAIRFIELD ROAD WITH VICTORIA STREET



FAIRFIELD ROAD ELEVATION



LOCATION PLAN @ 1:1250



PART GROUND FLOOR PLAN @ 1:100

Client
10 WETHERSPOON PLC

Project
PICTURE PALACE
FAIRFIELD ROAD
BRAintree
ESSEX CM7 3HA

Title
LOCATION PLAN, PROPOSED EXTERIOR PAVEMENT CAFE PLAN
AND EXTERIOR PHOTOGRAPHS

Scale
VARIOUS
Job No
5619

Date
30/09/07
Dwg No
L.01

Drawn by
LS
Revision



Permit Number: PP9

Premises Licence Reference: 18/00497/PP



PAVEMENT PERMIT

HIGHWAYS ACT 1980 PART V11A

IN ACCORDANCE with the Highways Act 1980 Section 115E (1) (a) & (b) the Braintree District Council (hereinafter called the Council) **HERBY PERMIT** the persons named below for the purposes to place and chairs with tables and umbrellas ("furniture") on the Highway within the area delineated on the attached plan ("the permitted area") subject to the attached conditions.

THIS PERMIT is issued subject to any right of the Council to revoke, suspend or vary this permit on any of the grounds specified in Council's policy.

14th June 2018

Corporate Director

Date of Issue

Purpose Licensed

Pavement Permit

Act(s) of Parliament

HIGHWAYS ACT 1980 PART V11A

Permit Holder

J D Wetherspoon

Of

**Legal Department
Wetherspoon House
Reeds Crescent
Watford WD24 4QL**

Area

**The Picture Palace
Fairfield Road
Braintree CM7 3HA**

Permitted Hours

Monday to Sunday 09:00am to 20:00pm

**Maximum Number of Persons to
Occupy Permitted Area**

12 People on Six Tables

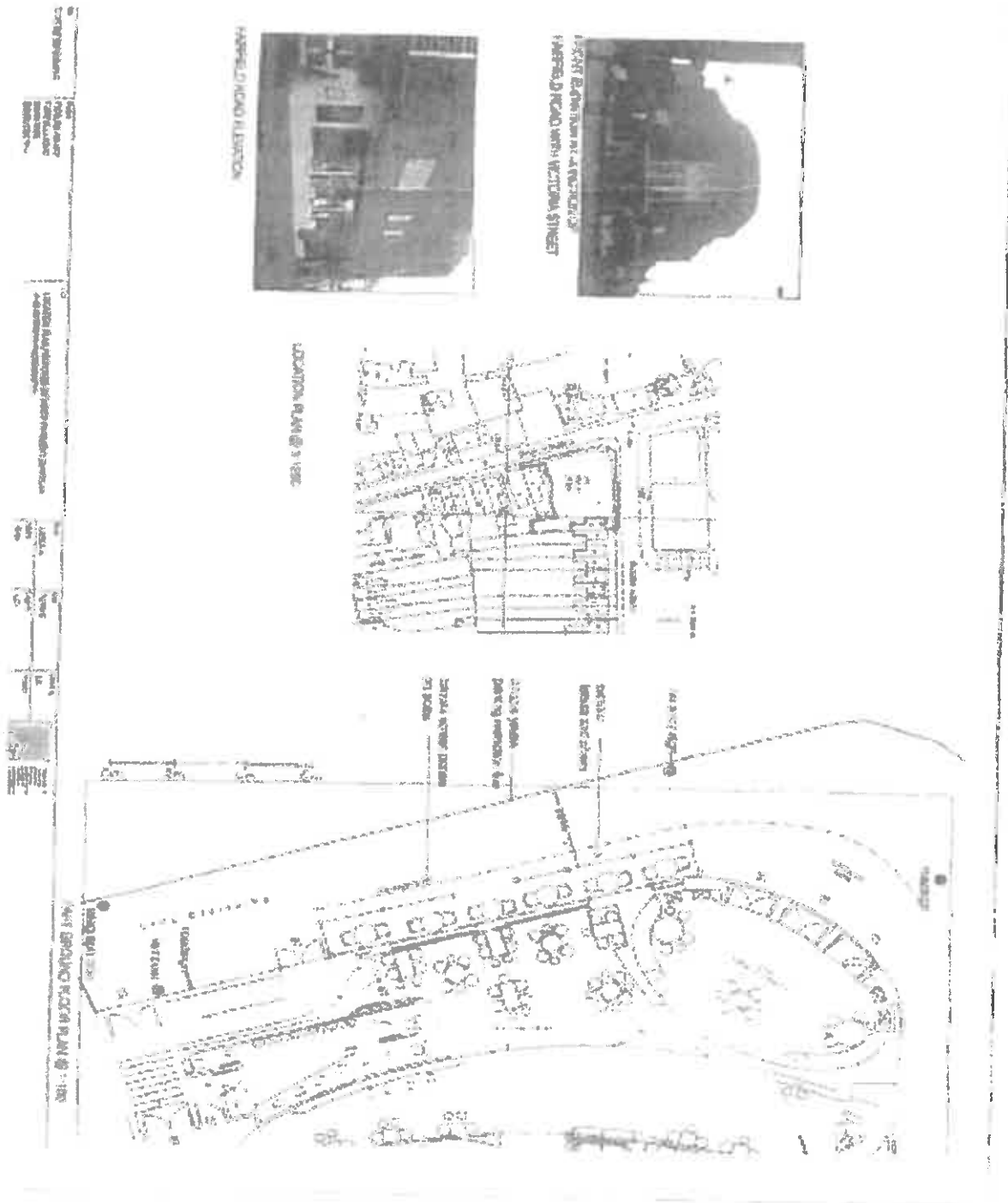
Period of Licence

11th May 2018 to 10th May 2019

Conditions and Plan

See attached

Plan



Pavement Permit Conditions

HIGHWAYS ACT 1980 PART V11A

- 1. No furniture or other objects shall be placed on the permitted area, which will cause a hazard or an obstruction to the free flow of pedestrians, prevent the normal access to premises adjoining the highway, access by emergency or service vehicles or to prevent statutory undertakers and operators of electronic communications code network having access to any apparatus in, on or over the highway.**
- 2. The permitted area shall be used solely for the purpose of consuming refreshments. The permit holder must employ sufficient staff to provide table service to the outside area and have sufficient provision of sanitary conveniences for use by the public. The expectation is that all customers will be seated and waited upon.**
- 3. The Permit granted is not transferable.**
- 4. The Permit Holder or any person on his behalf shall make no fixtures to or excavations of any kind in the surface of the highway, which shall be left entirely undisturbed.**
- 5. The Permit Holder shall have no claim or charge against the Council in the event of the furniture or other objects being lost, stolen or damaged in any way from whatever cause.**
- 6. The Permit Holder shall indemnify both the Council and the Essex County Council as highway Authority against all actions, proceedings, demands, and liability which may at any time be taken, made or incurred arising out of the grant of this Licence and for this purpose must take out at the Licensee's expense a Policy of Insurance approved by the Council in the sum of at least £5 million in respect of any one event and must produce to the Council on request the current receipts for premiums and confirmation of renewals of the Policy.**
- 7. The permitted area shall be used solely for the purpose of consuming refreshments.**
- 8. No charge shall be made for the use of the furniture.**
- 9. Any waste from the Permit Holder operations shall not be disposed of in the permanent litter bins provided by the Council.**
- 10. Refuse and litter deposited on the Highway in the vicinity of the chairs and tables must be collected and removed each day by the Permit Holder at the Permit Holder's expense at not less than hourly intervals or at more frequent intervals as may be required by or under the Environmental Protection Act 1990.**

- 11. All furniture permitted by this Permit shall be removed by the Permit Holder outside the permitted period of use and immediately if required by the Council to permit works in or the use of the Highway by the Council, Essex County Council, or emergency services, any statutory undertaker or telecommunications code operator and no claim shall be made against the Council for any loss of revenue or for refund of permission fee as a result thereof.**
- 12. No alcohol shall be consumed on the permitted area unless the Licensing Authority under the Licensing Act 2003 has issued a Licence.**
- 13. The Permit Holder shall be responsible for any rates, taxes and other out goings, which may be charged arising from the exercise of this Permit.**
- 14. The Permit Holder shall at the written request of the Council remove from the permitted area any furniture, which is not maintained to a standard satisfactory, by the Council.**
- 15. No music is to be played in the permitted area.**
- 16. All glasses, crockery and other ancillary items (including ashtrays) used in the permitted area, are required to be made of a toughened material. All glass-bottled drinks, including alcoholic drinks must be served in toughened drinking glasses. Glass bottles are not allowed in the permitted area.**
- 17. The Council will not permit the use of patio or outdoor space heaters in the permitted area.**
- 18. The Permit Holder shall keep the furniture clean and tidy and the tables cleared regularly.**
- 19. The Permit Holder shall not place any furniture on the permitted area outside to the agreed times specified in the Permit.**
- 20. No furniture shall be placed on the permitted area if the business is not open and trading.**
- 21. No outdoor preparation of food is permitted.**
- 22. The Permit Holder shall not cause or permit any nuisance or annoyance to users of the Highway or neighbouring business.**
- 23. The Permit Holder shall not place any furniture on to Highway other than within the permitted area and in accordance with the terms and conditions of the Licence.**

24. The Permission may be terminated:-

- a) By either party giving to the other not less than one month's notice in writing to expire on the anniversary of the date of the permission.**
- b) In the event of the Licensee failing to comply with any of the above conditions the Council may terminate this permission by giving 24 hours notice in writing to the Licensee and in this event all monies previously paid shall be forfeited and such determination shall be without prejudice to any right or action which the Council may have for breach of the terms of the Licence in relation to damages or otherwise.**
- c) Any notice to be served in connection with this Permit shall be sent either by first class pre-paid post, by facsimile transmission or served by hand and shall be deemed to have been served upon the Council if sent addressed to the Corporate Director of Environment, Braintree District Council, Causeway House, Braintree or upon the Permit Holder if sent addressed to the Permit Holder at their registered office or at the local trading address.**

25. The Council reserve the right to add to or alter these conditions as may be required.

26. The Permit Holder's attention is drawn to Section 115 K of the Highways Act 1980 in regard to the failure to comply with the terms and conditions of the Permission and a copy is attached.

27. The clearance of litter including cigarette ends must be cleared daily.

28. There must be 1.8 meters of pavement unobstructed at all times

29. The tables and chairs should be contained within removable barriers which should separate the table and chairs from the Highway. The barriers must have a minimum overall height of 800mm and a gap of no more than 150mm between the base or tapping rail and the ground. They must be manoeuvrable enough to allow them to be removed from the Highway into the main premises at the close of business. It is recommended that the barriers are in a contrasting colour to the Highway surface to provide maximum impact for the visually impaired.

Additional Conditions submitted by the Applicant

- 1. At least one member of staff will supervise the outside area at all times that it is in use.**
- 2. CCTV cameras will operate in the outside area and footage from these cameras will be retained for 30 days and will be made available to the Police upon request.**
- 3. Emergency routes from adjacent buildings and our own will not be obstructed by the Permit.**

- 4. A clear pedestrian route will be maintained for those walking past the premises.**
- 5. All food and drink to be consumed in the pavement café must be purchased at the bar.**
- 6. Children under the age of 16 must always be accompanied by an adult who will be required to maintain supervision.**
- 7. The playing of amplified music will not be permitted within the Pavement Permit area.**

Disclosure and Barring (DBS) Update Service		Agenda No: 6
Portfolio	Environment and Place	
Corporate Outcome:	A sustainable environment and a great place to live, work and play Residents live well in healthy and resilient communities where residents feel supported	
Report presented by:	John Meddings, Principal Licensing Officer	
Report prepared by:	John Meddings, Principal Licensing Officer	
Background Papers:	Public Report	
1. Government Response – Report of the Task and Finish Group on Taxi and Private Hire Vehicle Licensing – February 2019	Key Decision: No	
2. Local Government Association - Example Taxi & PHV Licensing Criminal Convictions' Policy (22 nd March 2017)		
3. DBS Update Service: Employer Guide		
4. Guidance on determining the suitability of applicants & licensees - hackney & private hire trades 2018		
5. Braintree District Council Relevance of Conviction Policy 2018		
6. Consultation responses (Appendix 1)		
Executive Summary:		
<p>Under the powers conferred to Braintree District Council under the Town Police Clauses Act 1847 and the Local Government (Miscellaneous Provisions) Act 1976, (as amended), Braintree District Council has responsibility for licensing Hackney Carriage, Private Hire and Dual Licence Drivers as well as vehicle proprietors and Private Hire Operators within the District.</p> <p>Licensed drivers provide a public service and the District Council will not licence any individual to drive a Hackney Carriage or a Private Hire Vehicle unless it is satisfied that they are a fit and proper person. There is no definition of 'fit and proper' in legislation, nor a fixed legislative process. It is for Braintree District Council to determine how it wishes to be satisfied that a driver is fit and proper and, to this end, the Authority considers a range of documentary evidence, practical criteria and testing mechanisms provided by an applicant in order to be satisfied of this.</p> <p>One of the requirements is for a driver to undertake a criminal record check at 'enhanced disclosure' level upon application and at three yearly intervals. This check is known as an Enhanced Disclosure and Barring Service (DBS) check. The DBS is an executive non-departmental public body sponsored by the Home Office. It aids organisations to make safer decisions and helps prevent unsuitable people from working</p>		

with vulnerable groups, including children. The DBS checking process is a credible means of checking on an individual's criminal activity, whether convicted or otherwise. The DBS Update Service is an online service which allows licence holders to keep their DBS Certificates up to date and with the relevant permissions allows the District Council to check a DBS Certificate easily.

Since the launch of the Update Service in June 2013, Braintree District licensed drivers have been encouraged to subscribe. Given the benefits for licence holders and the Authority, it is proposed that subscription to the DBS Update Service becomes mandatory for all licensed drivers <https://www.gov.uk/dbs-update-service>

Recommended Decision:

Members of the Licensing Committee are recommended to make the subscription to the DBS Update Service mandatory for all licensed drivers as set out in the main body of the report.

Purpose of Decision:

To ensure Braintree District Council has a robust, fast and efficient way of accessing licence holders criminal records' history. The proposals are necessary in order to contribute to the District Council's safeguarding responsibilities, along with the statutory licensing obligations.

Corporate Implications

Financial:	The proposed procedure will reduce the time taken to process renewal applications. This may have an effect on the cost recovery for this process.
Legal:	No matters arising out of this report
Safeguarding:	The proposals are necessary in order to contribute to the District Council's Safeguarding responsibilities.
Equalities/Diversity:	An Equality Impact Assessment will be completed during the consultation period, if Members agree to the recommended decision.
Customer Impact:	Once applicants have signed up to the update service the licence holder will see a reduction in the total cost of licensing for drivers.
Environment and Climate Change:	No matters arising out of this report
Consultation/Community Engagement:	A six week consultation has taken place with safeguarding partners and Braintree District Council Drivers and Operators.
Risks:	The current system leads to significant delays in accessing licence holders' criminal history and potentially places the travelling public at avoidable risk.
Officer Contact:	John Meddings
Designation:	Principal Licensing Officer
Ext. No:	2213
E-mail:	John.meddings@braintree.gov.uk

1. Background

- 1.1 Braintree District Council has responsibility for licensing Hackney Carriage, Private Hire and Dual Licence Drivers as well as vehicle proprietors and Private Hire Operators within the District.
- 1.2 Braintree District Council will not licence an individual as a Hackney Carriage, Private Hire or Dual Driver unless it is satisfied that they are a fit and proper person (Local Government (Miscellaneous Provisions) Act 1976, Section 51 (1)(a) and Section 59 (1)(a)).
- 1.3 There is no definition of 'fit and proper' in legislation, nor a fixed legislative process. Braintree District Council considers a range of documentary evidence, practical criteria and testing mechanisms provided by an applicant in order to be satisfied of an individual's fitness and propriety.
- 1.4 Since 2001 all driver applicants to the licensed trade have undertaken Criminal Records Bureau (CRB) or (as is known now) Disclosure and Barring Service (DBS) checks. Prior to that, the responsibility for disclosure rested with the Police and all drivers prior to 2001 were subject to a Police check.
- 1.5 The Council is registered with the DBS in order to carry out criminal record checks, which are used as one of the testing mechanisms to assess an applicant's suitability for the role of a licensed driver. Any information disclosed on an individual's DBS certificate is vital to the decision making process to enable the Authority to meet its statutory requirements.
- 1.6 An Enhanced DBS Check (for a fee of £44) is currently sought upon first application by an individual for a driver's licence and every three years thereafter (for a fee of £44, and if subsequent renewal applications are made).
- 1.7 The DBS Disclosure Certificate includes details of spent and unspent convictions, spent and unspent cautions, additional Police information and barred list(s) information for an individual undertaking the role of a licensed driver.
- 1.8 A DBS check is undertaken, face to face, at an appointment with an Officer of the Council. Following an application being made, the DBS certificate is issued directly to the applicant. It is then the applicant's responsibility upon receipt of the certificate to present it to the Council as part of their application, before their licence application can be fully processed.
- 1.9 If an individual's DBS certificate is not presented to the Council as part of the application prior to the expiry date of the current licence, the licence will be deemed to have expired.
- 1.10 Upon receipt of a disclosure certificate from the DBS, via the applicant, the information (if there is any) will be risk assessed by a Senior Officer who will consider whether the information disclosed is capable of having relevance as to whether or not the individual is a fit and proper person to hold a licence in line with the Hackney Carriage and Private Hire Licensing Policy and the

guidance as set down in Braintree District Council's Relevance of Conviction Policy.

- 1.11 Up until this point in time, the Council has been strongly encouraging all licensed drivers to subscribe to the Update Service. In doing so the Update Service allows individuals to keep their DBS certificate up to date online, subject to an annual fee which is currently set at £13. This represents a reduction in the costs year on year associated with undertaking a full DBS check.
- 1.12 Some licensed drivers are subscribed to the Update Service and this works well for them and for the Council in undertaking relevant checks and in processing their licence applications.
- 1.13 Subscription to the Update Service is quick and simple and must be done within specified timescales. Subscription lasts for a year and must be renewed annually, before the current subscription ends.
- 1.14 In addition to other benefits, the DBS Update Service allows Officers to carry out a quick online status check to see if an individual's certificate is up to date. It enables the Council to see if any relevant information has been identified about the individual since their DBS certificate was issued.
- 1.15 If a change is highlighted since the original certificate was obtained a new enhanced DBS check would then need to be made to establish the details of the changes. This would also suggest that a conviction had been obtained since the previous certificate and could potentially pose a significant risk to public safety. It is highly likely that in this instance the licence would be suspended or revoked, as drivers are required to declare convictions received.
- 1.16 Further benefits are:
 - Allows an instant update of changes to status of the check.
 - No more DBS application forms to fill in.
 - Strengthens application and renewal processes.
 - Can take DBS certificate from role to role within the same workforce.
 - Supports safeguarding and protection of the public.
 - Individual is in control of their DBS certificate.
 - Reduces risks.
- 1.17 As detailed in the background papers, current guidance from the Department of Transport, Local Government Association and the Institute of Licensing all advise Local Authorities to ensure licence holders are registered with the Disclosure and Barring Service Update Service.

2. Proposed Amendments to Policy and Procedures

- 2.1 An enhanced DBS shall be undertaken upon application and every three years thereafter (if subsequent renewal applications are made). The Licensing Authority may, at its discretion, require additional DBS checks within the standard three year cycle.

- 2.2 An enhanced DBS shall be undertaken upon application and all licensed drivers will at that point be required to subscribe to the DBS Update Service within the specified timescale of receiving their DBS certificate.
- 2.3 Every three years, Officers of the Council will undertake an online check of the DBS Update Service in order to check the applicant's current status. Depending on what is revealed from the online status check, the Council may require an additional DBS check to be undertaken.
- 2.4 All licensed drivers will be required to renew their subscription to the DBS Update Service on an annual basis, before their current subscription ends, should they wish to continue to hold a Braintree District Council driver's licence.
- 2.5 Where an individual fails to maintain and or renew their subscription before it ends; they will be required to apply for a new DBS check and register for the Update Service again. This would also be a breach of conditions and pose a risk to public safety and would require the suitability of the licence holder to be determined. This could ultimately result in the suspension, or revocation of the licence.
- 2.6 Where legislation allows, the condition below to be attached to drivers' licences.

Braintree District Council requires all licensed drivers to subscribe to the DBS Update Service and to maintain the annual subscription. Licensed drivers will need to retain their DBS certificate once they have subscribed as this will need to be provided to the Officer undertaking the online check.

- 2.7 In conclusion, it is considered that the proposals are necessary in order to contribute to the District Council's Safeguarding responsibilities, along with the statutory licensing obligations. The time-frame for moving all existing licensed drivers to the DBS Update Service is a three year cycle, due to the logistical set up of licence renewals.

3. Consultation

- 3.1 The consultation ran for a period of six weeks and included safeguarding partners (Essex Police, Community Safety etc.) and Braintree District Council Licensed Drivers and Operators.
- 3.2 Two responses were received during the consultation period (Appendix 1), both of which were positive to the proposed changes.

4. Implementation

- 4.1 All drivers and operators will receive correspondence explaining the changes in detail and a guide on how applicants can register with the Disclosure and Barring Update Service before 31st July 2019.

- 4.2 Details of the changes will be integrated into renewal letters from 1st August 2019 to complement the earlier correspondence regarding the changes.
- 4.3 When applications are received, officers will reiterate the changes and assist in ensuring applicants understand their responsibilities and the consequences for non-compliance.
- 4.4 Due to the four month renewal process, the implementation date will be the 1st December 2019. All applicants (new and renewal) will then be required to be able to evidence that they are subscribed to the Update Service. Applicants can evidence their registration by providing an Update Service ID number.
- 4.5 Due to the three year duration of licences, it will take until December 2022 for all drivers to be on the Update Service and for the changes to be fully in effect.

Mann, Jessica

From: Licensing
Sent: 23 April 2019 16:47
To: Meddings, John
Subject: FW: Consultation comments - DBS update service

Follow Up Flag: Follow up
Flag Status: Completed

Please see email below.

Kind regards,

Jessica Moore

Licensing Technical Administration Officer

Braintree District Council, Causeway House, Bocking End, Braintree, CM7 9HB
 01376 552525 Ext. 2644 | www.braintree.gov.uk | jessica.moore@braintree.gov.uk

From: Andrew Hensman [mailto:
Sent: 23 April 2019 4:39 PM
To: Licensing <licensing@braintree.gov.uk>
Subject: Consultation comments - DBS update service

In response to the consultation on the DBS update service and digital checks, I would suggest that both are mandatory and the paid service for checks on driving licences is also withdrawn. There are advantages for both applicants and the licensing team and I therefore see no reasons for this not to be put forward to be adopted in policy.

The DBS update service is both cheaper and easier, with the only onus on the driver being to ensure that payment is available when pre-warned about it being due, usually in an email from the DBS. This is important as their subscription will end where payment cannot be collected, and a fresh application will need to be made. As officers will check the update service regularly, a condition will be required that should the update service be found to have ended, the licence becomes invalid and an associated procedure put in place to recover the position. The advantages of paying annually also reduces the larger sums previously required at once, along with the other expenses of, for example, the group 2 medical when being required at the same time; also not having to fill in another form, which can be difficult to understand what is required, prone to mistakes, and having to get the requisite ID checked and certified.

Where the DBS update service is made mandatory, a condition needs to be added for applicants who are joining it for the first time in that confirmation must be received that this has been done before a licence is issued. The reason is that the window for joining it is tight and needs to be made clear: this must be done either using the application form's code where the form must also be received by the DBS within 28 days of joining, or within 30 days of their certificate being issued (not the date of receipt) using the certificate

number. I would therefore suggest that it is done upon application and I'm sure that officers will help applicants to complete it, if necessary, at their appointment, to ensure that the form is returned to the DBS within the required 28 days. Earlier registration may miss the deadline where it is not forwarded to the DBS on time due to late submission to the licensing team.

DVLA codes are also very easy to obtain, which is why I suggest withdrawing the paid service. If a driver is unable to produce a code due to not having a computer, this becomes unlikely if the DBS update service is mandated, as a computer is necessary for this. However, the licensing officer can assist the driver to produce a code at their appointment using one of the computers in the interview rooms when checking the application. All that is needed is the licence number and the postcode on the licence (they produce their card as part of the application) and their National Insurance number which, again, is needed as part of the application for a DBS certificate. The advantage of generating the code at the appointment is that has maximum validity time, and is an instant verification at that point as all information can be seen and is as up-to-date as possible. The applicant can then be advised there and then should anything untoward be revealed.

Since joining the DBS update service when it first became an option, I have found that I can effectively forget about my DBS check and could submit my renewal nearer to the date without worrying about holdups in required information not being available. Suggestions of the application times should therefore be revised (instead of the current four months) required by the licensing team to complete the checks and guarantee that a licence can be issued to ensure continued working. Whilst I appreciate that it is down to the applicant to ensure that their application is received in good time, any issues that may crop up would usually already be known to the applicant and, where they are a renewing driver, these should also have been notified to the licensing team at the time that they arose. It is not unreasonable, therefore, to be given the suggested processing time as anything that subsequently raises issues is down to the driver: their inability to continue working will actually arise from the penalties imposed for not informing the team, as is the case now. Assuming their house is kept in order, the application should progress speedily with no unknowns. This being the case, I have always found the team to be very accommodating, and I have never had a problem in receiving my renewed licence on time because advice, guidance and timescales issued have been followed.

I trust this is useful feedback, I am happy to assist further should it be required.

Andrew Hensman

D411

Mann, Jessica

From: Licensing
Sent: 07 May 2019 08:48
To: Meddings, John
Subject: FW: Your Braintree District Council online form receipt

From: kashif zia [mailto:
Sent: 03 May 2019 11:12 PM
To: Licensing <licensing@braintree.gov.uk>
Subject: Fw: Your Braintree District Council online form receipt

Dear Sir/Madam,

Please find attached disclosure reference number.

I am happy with the changes comping, it will reduce the processing time and every thing is digitalise which can be assessed quickly from any where.

Kind Regards,

Kashif Zia

----- Forwarded message -----

From:
To: "
Sent
Subject: Your Braintree District Council online form receipt

Thank you for submitting your form to Braintree District Council.

This message confirms receipt of your Disclosure and Barring Service Consultation

Your form reference is

Braintree District Council