

MONMOUTHSHIRE COUNTY COUNCIL

COMMERCIAL PROVISION POLICY

1. Introduction

1.1 Commercial activities can help form part of a vibrant street scene. This policy aims to help coordinate, reduce the risks involved and provide a system that can be managed and readily understood. The policy makes provision for an annual licencing fee, and a one off licence charge to cover the administration costs.

1.2. What is a Commercial Provision?

Commercial Provisions' are defined as, for profit, business or non-charitable organisation's activities provided to improve the business and contribute to Highway Street scene. They can include the following activities, or activities of a similar nature.:-

- (i) Café Tables and chairs
- (ii) Tables and benches
- (iii) Sale rails, sale displays, furniture and items of a temporary nature

1.3 The problems of Commercial Provision

These provisions, because they are unmanaged, create unnecessary risks and hazards to highway users. A single system aimed at approving and registering these provisions will allow Monmouthshire County Council to ensure its duty to 'assert and protect the rights of the public to the use and enjoyment of any highway'. The agreement, which would include a plan and notes to confirm approval will further improve Monmouthshire County Council's management of the risk.

1.4 Legislation

- (i) Under section 130 of the Highway Act 1980 (1) it is the Duty of the highway authority to assert and protect the rights of the public to the use and enjoyment of any highway for which they are the highway authority, including any roadside waste which forms part of the it.
- (ii) Under section 149 of the Highway Act 1980 (1) if anything 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.....
- (iii) Under section 149 of the Highway Act 1980 (2) if the highway authority for any highway have reasonable grounds for considering –
 - a. That anything unlawfully deposited on the highway constitutes a danger.....to the users of the highway, and
 - b. That the thing in question ought to be removed without the delay involved in giving notice.....
Under this section, the authority may remove the thing forthwith
- (iv) Under section 50 of the New Roads and Street Works Act 1991. The Authority has the power to impose conditions on permissions they think fit, including conditions requiring the payment to the council of such reasonable charges as they may determine

2. Methods of Prevention

The Council aims to prevent illegal Commercial Provision at source. Applications are normally made to Monmouthshire County Council at an early stage and by guiding applicants through this process will provide the prevention method. By

circulating the new policy to all businesses / business forums, either at consultation or implementation stage it will again provide a degree of prevention.

2.1 Highway activity

The Highway Operations Department have a high activity in this area. Intervention through education with written and oral guidance have only limited success.

2.2 General

This Authority is committed to helping and engaging the community when requested. No formal approach exists and applications are treated on personal experience and not through official guidance.

3. Our Approach

3.1 This Authority recognises the need, and the desire, for Local Community provision. It does not therefore seek a 'zero tolerance' approach, recognising the difficulties this would present to charitable and community groups, Business, statutory bodies and others.

3.2 Any complaints regarding commercial provision will in the first instance be recorded at our One Stop Shops. A 'process map' outlining the procedure for dealing with commercial provision is provided in Attachment 1. Staff at the Customer Contact Centre's will be updated to reflect recent changes in both legislation and personnel (notably in Highways). Highways would be the first point of reference for any commercial provision complaints, referring to colleagues in other teams where the situation demands – as outlined in Section 2 above. The 'one point of reference' will allow the Authority to measure numbers of complaints, any trends, and our effectiveness.

3.3 It is the view of Officers in Highways that they deal with their elements of existing legislation, because of their professional and competent approach. This policy will allow Highway Engineers to manage and determine compliance with the Highways Act provisions with more confidence. Better joint working, with improved communication, between those teams who maintain open spaces will help ensure acceptance throughout the organisation. For example, a provision request made to the Highway Department on a Public Right of Way can be relayed to Countryside directly with an understanding that they will manage any provision.

3.4 Retrospective applications will be pursued.

3.5 Highways staff, in the interests of clarity, will adopt the following prescribed approach:

Any Organisations are permitted to apply under this provision, provided they :-

- do not cause offence
- do not cause a traffic or pedestrian hazard or safety issue in any way
- do not damage hardware by their presence
- are of presentable and safe in quality
- are maintained, where stipulated in the agreement, by the organisations concerned
- adequate free passage for pedestrians and vehicles is maintained

The following organisations are expressly not permitted to erect signs:

- Party political organisations

- Companies with no fixed address
- Companies that do not comply with this policy in any way
- From time to time any company, business or organisation that may be deemed or their display may be deemed inappropriate for any reason

3.6 Approved organisations who fail to observe the Council's conditions may have their permit withdrawn and may risk prosecution.

4. Outcomes

4.1 The outcome sought is to ensure a quick and effective response to requests. By consistent recording of requests and successful applications, working together better with early intervention, resolution and enforcement of problems will limit the current confusion.

4.2 Officers involved with the policy will ensure all relevant Officers, including Customer Contact Centre staff, are aware of the content of this policy and monitor compliances, to update their procedures and provide some training.

4.3 The policy will be reviewed every 12 months to determine whether it assists in reducing fly posting in Monmouthshire.

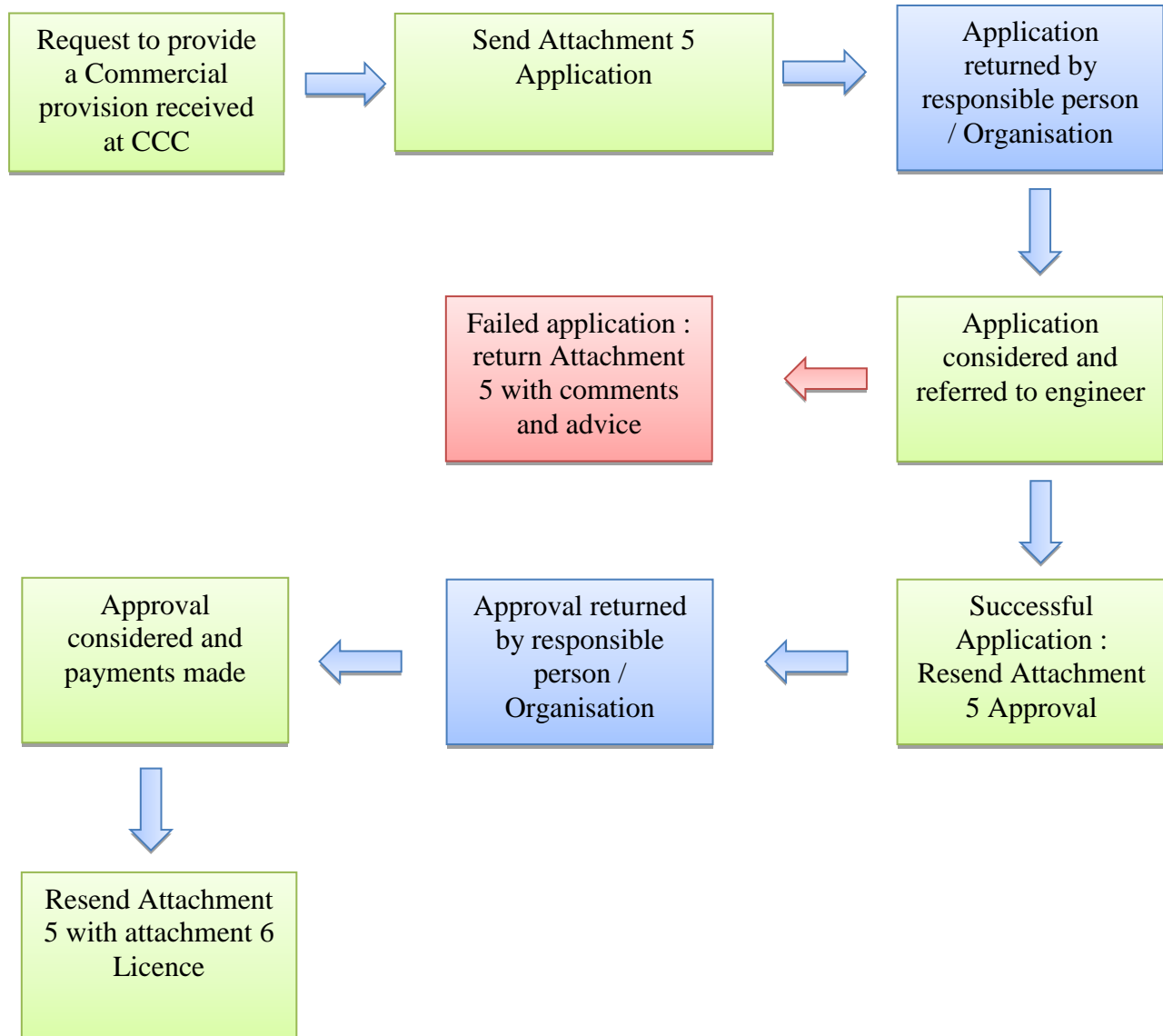
5. Report Contributors

6. Report Authors –

Steve Lane
Highways Operations Manager
Operation Directorate

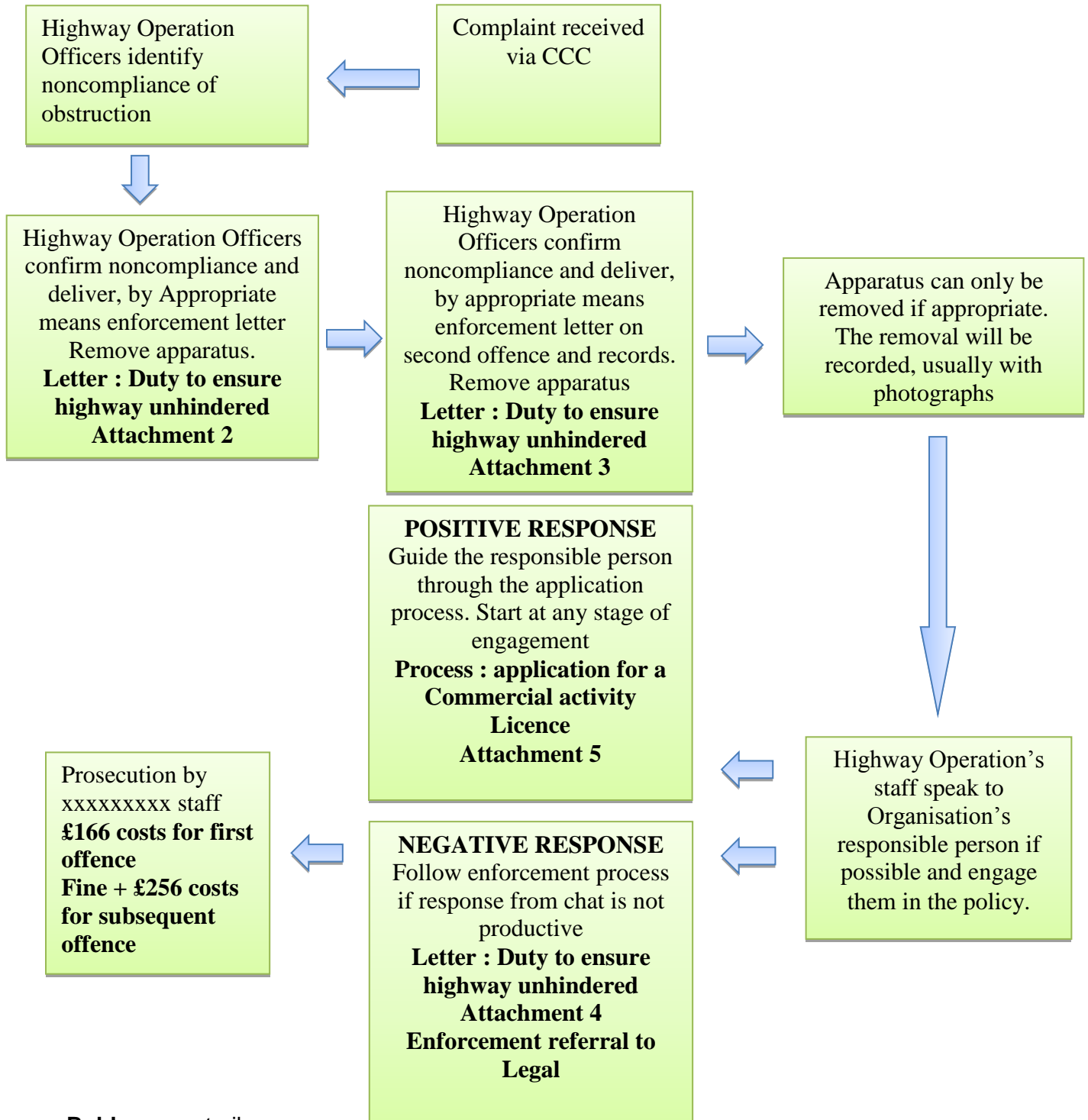
Attachment 1

LICENCE FLOW



CCC = Customer Contact Centre / call centre

ENFORCEMENT FLOW



Bold = paper trail
CCC = Customer Contact Centre / call centre

The person dealing with this matter is:

Highway Enquiry Desk

Tel.No./Ffôn: 01633 644725

Fax/Ffacs: 01633 644725

Email/Ebost:

Our Ref:/Ein Cyf: HED/ **T21**

Your Ref: Eich Cyf:

Date/Dyddiad :

Dear Sir/Madam

Highway Act 1980 Section 130 : Duty to ensure Highway is unhindered

I am writing to advise you that apparatus, we believe belongs to you or bears your identity has been found illegally placed on Highway in Monmouthshire. It is an offence under section 149 of the Highways Act 1980 to erect such an object on the highway. No permission has been given for this apparatus to be placed on the highway, so it is therefore, may be, removed by the Council.

Monmouthshire County Council have a policy that allows organisations, who meet the local needs, to install apparatus in the Highway. Some fees are required to do so but should you wish to make an application please do so by contacting your local Customer Contact Centre or calling 01633 644725.

Yours faithfully

Steve Lane
Highway Operation's Manager
Operations Directorate

The person dealing with this matter is:

Highway Enquiry Desk

Tel.No./Ffôn: 01633 644725

Fax/Ffacs: 01633 644725

Email/Ebost:

Our Ref:/Ein Cyf: HED/**T22**

Your Ref: Eich Cyf:

Date/Dyddiad : 28 June 2016

Dear Sir/Madam

Highway Act 1980 Section 130 : Duty to ensure Highway is unhindered

I am writing to advise you that apparatus, we believe belongs to you or bears your identity has been found illegally placed on Highway in Monmouthshire. I must remind you that it is an offence under section 149 of the Highways Act 1980 to erect such an object on the highway without consent. No permission has been given for this apparatus to be erected, so it is therefore being removed again by the Council.

Your co-operation in refraining from the activity will be appreciated, as we prefer such matters not to escalate to a prosecution. Court action is not in the interests of either party, and the courts generally favour the local authority in such cases.

You should be aware that it is the policy of the Council to prosecute people who repeatedly obstruct the highway. No further warnings will be issued to you on this matter.

Monmouthshire County Council have a policy that allows organisations, who meet the local needs, to install apparatus in the Highway. Some fees are required to do so. You should ensure, if you wish to persist with these obstructions, to make an application please do so by contacting your local Customer Contact Centre or calling 01633 644725.

Yours faithfully

Steve Lane
Highway Operations Manager
Operations Directorate

The person dealing with this matter is:

Highway Enquiry Desk

Tel.No./Ffôn: 01633 644725

Fax/Ffacs: 01633 644725

Email/Ebost:

Our Ref:/Ein Cyf: HED/**T23**

Your Ref: *Eich Cyf*:

Date/Dyddiad : 28 June 2016

Dear Sir/Madam

Highway Act 1980 Section 130 : Duty to ensure Highway is unhindered

I am writing to advise you that apparatus, we believe belongs to you or bears your identity has been found illegally placed on Highway in Monmouthshire. I have reminded you in the past that it is an offence under section 149 of the Highways Act 1980 to erect such an object on the highway without consent. No permission has been given for this apparatus to be erected, so it is therefore being removed again by the Council.

I am passing the matter to the Council's solicitors, who will now instigate legal proceedings. Our costs will be recovered through the courts.

Yours faithfully

Steve Lane
Highway Operations Manager
Operations Directorate



**APPLICATION : COMMERCIAL OBSTRUCTION IN THE HIGHWAY LICENCE
TYPE E : COMMERCIAL ACTIVITY PROVISION IN HIGHWAY**
Subject to section 50 of the New Roads and Street Works Act 1991

Agreement by both parties, to this arrangement, will require the payment of a one off approval fee and an annual licence fee to Monmouthshire County Council
These fees are : One Off approval fee of £125 on successful application / agreement. Annual licence : less than 6m2 = £120 or 6m2 to less than 12m2 = £240 or 12m2 to 18m2 = £360.

Organisations are reminded that permission granted is subject to the full policy of Monmouthshire County Council. (copies available on request.) In particular, all proposed activity must not a) cause offence, b) Cause a traffic hazard or safety issue, c) damage street furniture by their presence, d) compromise safety if a permanent feature. e) project must be of accepted quality and be appropriate, or f) Will remove the provision immediately on the request of a Police officer, a member of the Emergency services or an Officer of Monmouthshire County Council.

I wish to apply for permission to use the Public Highway in Monmouthshire

My organisation.....

Responsible representative :.....Signature :.....

Email Address :.....Tel No. :.....

Postal Address :.....

Is the proposal adjacent to your premises : No you may not be able to use the public highway, unless safe. continue with application

Yes continue with application

Proposal : Supply detail drawings / plans / specification as required

.....
.....
.....
.....

Public liability insurers :.....Policy expiry date :.....

Duration :.....

Is this a permanent feature :.....

Location : Please supply detail plan and design as required for clarity.....

.....
.....
.....



Official use : Permission : Reference :

Given : please refer to Attachment 5 detailing criteria : Yes send attachment 5 with comments
 Refused : please give reasons in comments : Yes send attachment 5 with comments
 Referred to Area Engineer for comments : Yes No

Area approved from plan Less than 6m2
£120 annual fee 6m2 to less than 12m2
£240 annual fee 12m2 to 18m2
£360 annual fee

Comments / Stipulations to licence :..include drawings and specifications that will form agreement.....

.....

Signed Engineer : Date :

Completed by Applicant: To be completed by the responsible Person, of the business, on successful agreement to undertake the Commercial Provision.

Please return, with payments, to allow the issue of a Licence.. Please note that the comment / stipulations made above will form part of the licence. Failure to comply with the Licence will require the removal of the provision.

Please find enclosed Payments as prescribed below. I understand that (a) I will need to ensure that I comply with the Guidance, employ a suitable management regime, and in particular (b) I will ensure that my Public Liability Insurance is maintained and my Organisation will remain covered, and Monmouthshire County Council will be indemnified for the whole duration of the Licence, (c) I will ensure the Provision does not cause a hazard or safety issue. Please call 01633 644725 to arrange payment

£125 application and approval fee, one off payment per application

£..... licence fee as detailed above and appropriate to below, e.g. :-

- (iv) Café Tables and chairs
- (v) Tables and benches
- (vi) Sale rails, sale displays, furniture and items of a temporary nature
- (vii) The provision and licensing of street markets will remain with Area Services Officers who currently organise and charge market stall holders for their events

Date Licence to commence :

I understand that this document will form the Licence only when signed and dated below by Officer of Monmouthshire County Council. The licence will be displayed in a prominent place accessible by the Public and Monmouthshire County Council Officers and within sight of the Commercial provision.

Signed : Responsible representative : (As application above).....

Signature : Date :



LICENCE FOR COMMERCIAL ACTIVITY SECTION 50

Reference :

Official use : The Licence in force when : This document and applicable stipulation / drawings received and

Approval fees Yes :

Licence Agreed Yes

PLAN

Signed : _____ Date : _____

Licence to place Provision within the Area defined above and agreement until,

DATE.....

Should you wish to enquire, or have concerns, about the provision detailed in the agreement above please contact Monmouthshire County Council via the Customer Contact Centre or Highways@monmouthshire.gov.uk