

Committee: LICENSING COMMITTEE

Agenda Item

Date: September 13, 2006

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Title: TABLES AND CHAIRS ON PAVEMENTS

Author: Michael Perry, Executive Manager Corporate Governance, 01799 510416 Item for discussion

Summary

1. This report informs members of the provisions permitting the placing of tables and chairs on pavements for use by persons consuming food and drink purchased from adjoining premises.

Recommendations

2. That Members request Council to delegate the power to grant permissions under the Act and to fix the fees in respect thereof to the Licensing Committee.
3. That Members request the Environmental Health and Development Control departments to advise on potential policy and draft condition considerations.

Background Papers

4. The following papers were referred to by the author in the preparation of this report and are available for inspection from the author of the report.
 - Part VII A Highways Act 1980 (herein after referred to 'The Act'.)

Impact

Communication/Consultation	The Council is required to publish a notice of any proposals received by affixing it in a conspicuous position at or near the place to which the proposal relates and to serve the notice on the owners and occupiers of any premises appearing to the Council to be likely to be materially affected. In addition, permission must also be obtained from Essex County Council as Highway authority.
Community Safety	None.

Equalities	None.
Finance	The legislation permits the Council to recoup the cost of administering permissions.
Human Rights	None.
Legal Implications	Unless permission is granted for tables and chairs to be placed upon the footpath, such activity would constitute an offence of obstructing the highway.
Ward-specific impacts	All.
Workforce/Workplace	None.

Situation

1. This report has been presented to members at the request of the Chairman of the Licensing Committee.
2. It is also anticipated that application for permission to place the tables and chairs on the pavement will be received with regard to premises in Saffron Walden shortly.
3. To date the Council has not issued any permissions for tables and chairs to be placed on footpaths and the power to grant such consent has not yet been delegated.
4. Using tables and chairs on the highway does not require planning permission unless the extent of the operation was such as to constitute a material change of use. Unless food or drink is sold on the highway, it would also not be street trading or a licensable activity under the Licensing Act 2003. If alcohol were to be sold on the highway a premises licence under the 2003 Act would be required. If food and/or non-alcoholic beverages were to be sold on the highway a premises licence would only be required if a) the food or beverages were sold hot and b) the activity took place between 23.00 hours and 05.00 hours (which constitutes the provision of late-night refreshment under the 2003 Act). Placing articles on a footpath would be obstruction of a public highway but permission under the Act would prevent it being an offence.
5. The Act empowers County and District Councils to give permission to use objects or structures on a footpath for any purpose which may result in the production of income. I understand that it is the view of officers at the County Council that such matters are best dealt with initially at District level. Before granting permission, the Council must consult by publishing a notice at or near the proposed site and by serving the owners and occupiers of

premises likely to be materially affected. At least 28 days must be allowed for representations to be made to the Council. Any representations must be considered before the permission is granted. Members may consider that greater publicity would be appropriate, for example consulting with Town and Parish Councils, Environmental Health and Development Control. In any event before permission can be granted, the Council must consult with the highway authority and may only grant permission with the highway authority's consent. Further, if the tables and chairs are to be between the centre of the highway and properties not owned or occupied by the applicant the consent of the owners and occupiers of those properties ("frontagers") must also be obtained. Similarly where the proposal relates to a walkway which passes through a building the consent of the owner or occupier of the walkway must be obtained.

6. The Council may impose conditions on the granting of any permission including a condition that the Council's reasonable expenses in connection with the granting of the permission shall be repaid.
7. It would not be permissible for the authority to have a policy that it would not permit tables and chairs on the footpaths in the district. Each application must be dealt with upon its individual merits. Members would be entitled to adopt a policy however, regarding which areas may be suitable for such activity. Should Members consider such a policy I would suggest that input is sought from planners/environmental health as to what would be appropriate conditions.

Targets

8. What we are trying to achieve is a balanced approach to the issue of tables and chairs being placed on footpaths.

Options

9. There are 2 potential options.
10. They are not to have a policy with regard to the suitability of locations or to adopt such a policy.

Pay-Offs/Penalties

11. If the Council does not have a policy regarding suitability there will be a haphazard approach. There is a risk that permissions may be granted in unsuitable locations where there has been no response to consultation.
12. If a policy is adopted, whilst it will be open to an applicant to justify departing from policy there would be a degree of consistency in dealing with applications.