

**Committee:** LICENSING COMMITTEE

**Agenda Item**

**Date:** November 1, 2006

**6**

**Title:** TABLES AND CHAIRS ON PAVEMENTS  
(UPDATED REPORT)

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

---

### Summary

1. Members received a report on this issue on 13 September 2006 and resolved to seek delegated powers from Full Council to set policy, conditions and fees and to seek advice from Environmental Health and Development Control on potential policy and draft conditions considerations. This report is to update members on the Council's response to the recommendation and the comments received from Environmental Health and Building Control.

### Recommendations

2. Members determine what policies (if any) they wish to adopt with regard to the siting of tables and chairs on pavements.
3. Members determine what conditions (if any) they wish to adopt as standard conditions for permissions.
4. Members determine the appropriate level of fees for the grant of permissions.
5. Members determine whether they wish to delegate the power to grant permissions to Area Panels.

### Background Papers

6. 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:
  - Standard Conditions issued by Chelmsford Borough Council.
  - Email from G Smith, Principal Environmental Health Officer
  - Email from S Locke, Project Officer

## Impact

4.

|                            |  |
|----------------------------|--|
| 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           | In formulating policies/conditions members will need to have regard to safety issues for those with visual impairments.  |
| Equalities                 | In formulating policies/conditions members should have regard to access issues for persons with disabilities and parents with children in prams or buggies.  |
| Finance                    | There will clearly be implications in terms of officer time. The legislation permits the Council to recoup the cost of administering permissions. The impact should therefore be financially neutral.  |
| Human Rights               | Article 6, first schedule Human Rights Act 1998 provides that in the determination of his civil rights and obligations, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. The Council in applying its own policies or setting its own draft conditions cannot be said to be an independent body. The Highways Act provides that consents may not be unreasonably withheld. In the event that an applicant maintains that the Council has unreasonably withheld consent, or has imposed unreasonable conditions, there is a right of appeal to an arbitrator appointed jointly by the parties or in default by the President of the Chartered Institute of Arbitrators. This would constitute a fair hearing within the meaning of Article 6 and thereby rectify any defects in the Council's |

|                       |   |
|-----------------------|---|
|                       | <p>process. A permission is similar to a licence and as such is likely to be deemed to be a possession within the meaning of Article 1 of the First Protocol set out in Schedule 1, Part 2 of the HRA. Article 1 of the First Protocol guarantees the right to freedom of enjoyment of possessions although such right may be interfered with in accordance with the law and for the general good. Where the Council is minded to revoke or not renew permission or to add additional conditions consideration will need to be given as to how far this is justified in terms of interfering with an applicant's rights under Article 1 First Protocol.</p> |
| Legal Implications    | <p>Unless permission is granted for tables and chairs to be placed upon the footpath, such activity would constitute an offence of obstructing the highway.</p>   |
| Ward-specific impacts | <p>All.</p>   |
| Workforce/Workplace   | <p>Policing the use of permissions will involve some of the enforcement officer's time.</p>   |

## Situation

5. Further to the recommendation on the 13 September 2006, on the 17 October 2006 Full Council resolved to delegate to the Licensing Committee the power to grant consent under Part VII A Highways Act 1980, the power to determine policy and draft conditions relating to such consents and the power to fix fees for dealing with applications.
6. One of the Government's policies is the promotion of a café style culture. The placing of tables and chairs on pavements is consistent with this aim and is also consistent with section 115J of the 1980 Act which provides that consents may not be unreasonably withheld but may be subject to reasonable conditions.
7. I consider it reasonable for the Council to adopt a policy regarding its approach to applications for permissions. This need not be a lengthy document however. I attach a draft policy for members' consideration as Appendix A.
8. I attach as Appendix B Draft Standard Conditions which have been prepared having taken advice from the Council's Principal Environmental Health Officer. It is intended that such conditions should be similar to default

conditions under the Gambling Act 2005, that is to say they will apply unless the Committee determine otherwise. Members should be aware that each application must be considered on its merits. Where an applicant can show that the concerns addressed by some conditions may be addressed in other ways, members should be prepared to relax such conditions. In other cases additional conditions may be necessary.

9. An estimate has been made of the officer time which would be required in considering and dealing with applications. The Council's Principal Environmental Health Officer estimates that Environmental Health Officers will need to spend approximately 1 hour per application at £25 per hour. The time of the Licensing Officers and the Project Officer responsible for access issues to include preparing reports for the Committee and the consultation process is estimated at 5 hours at £20 per hour. The cost to the Council therefore is likely to be £125 in respect of each application.

### Risk Analysis

10. The following have been assessed as the potential risks associated with this issue.

| Risk  | Likelihood  | Impact   | Mitigating Actions  |
|---|---|--|---|
| Members do not adopt a policy regarding the siting of tables and chairs on the highway. | Low. Members have already indicated that a desire for a consistent approach.                      | Medium. In the absence of a policy there is a probability that different standards would be imposed in different parts of the district, particularly if power to grant permissions was delegated to Area Panels. | Members should adopt a policy and if members determine to delegate power to grant permissions to Area Panels, members may consider that such delegation should be limited to cases where the decision would accord with policy. |
| Members do not adopt draft standard conditions.   | Low. Members have shown a willingness to consider standard conditions in other areas of its work. | Medium. Conditions could be imposed on a case by case basis without having standard conditions. This however, would involve more officer time.   | Members adopt appropriate draft conditions.   |

| Risk   | Likelihood   | Impact  | Mitigating Actions  |
|--|--|---|---|
| <p>The fee structure is excessive/ inadequate.</p> | <p>Low. Officers have carefully calculated the likely time involved. The cost figure based upon that assessment is likely to be financially neutral.</p> | <p>In the event that members do not set a fee or set a fee which is too low the impact would be LOW as the number of applications is unlikely to be significant in the early stages. This could change with the introduction of a ban on smoking in the work place when demand for tables and chairs on pavements may increase dramatically. In the event members set a fee scale which is too high, then the risk is HIGH. Such a charging regime may be the subject of a judicial review.</p> | <p>Members set a fee structure based on the cost to the Council of administering the granting of permissions.</p> |

**DRAFT POLICY ON THE SITING OF TABLES AND CHAIRS ON THE HIGHWAY  
UNDER PART VIIA THE HIGHWAYS ACT 1980**

**1.0 Introduction**

- 1.1 Government Policy is to encourage a café style culture within the UK. Uttlesford District Council (“the Council”) embraces this aim and recognises that the placing of tables and chairs on pavements for the public to use to consume food and drink enhances consumer choice. At the same time the council recognises that the convenience and health and safety of both consumers and the wider public needs to be protected.
- 1.2 The Council has power to grant permissions for tables and chairs to be placed on pavements under Part VII A Highways Act 1980 (“the Act”). Whilst Essex County Council has the same power, it is currently understood that at present the County Council believe that such applications are best dealt with at local level.
- 1.3 In considering applications for permissions under the Act the Council will apply this policy in balancing the needs and wants of consumers against the wider issues of public health and safety and public convenience. However, each case will be considered on its merits and where an applicant for permission can identify grounds justifying a departure from this policy then a departure may be made.
- 1.4 The Council acknowledges it is not appropriate to seek to replicate controls contained in other legislation in permissions granted under the Act. However, applicants should be aware that the granting of a permission under the Act does not relieve the applicant of the requirement to comply with all other legislation including the Licensing Act 2003, The Town and Country Planning Act 1990 (as amended) and legislation relating to food safety and health and safety at work.

**2.0 Access Issues**

- 2.1 Whilst encouraging street cafes the Council acknowledges the need of the public to pass and re-pass along footpaths without the risk of coming into contact with vehicular traffic. In particular the Council is concerned that those using wheel chairs, motobility vehicles or buggies (including double buggies) should be able to pass and re-pass on pavements notwithstanding the presence of tables and chairs. The Council would also expect adequate access to be made available to those with disabilities to the outside seating areas but recognises that this is an issue dealt with by the Disability Discrimination Act and that it should not therefore form part of the consideration of the granting of permission.

- 2.2 The Council will therefore expect applicants to demonstrate that there will be at least 700 mm/800 mm/1,500 mm of free pavement from the edge of the kerb to the seating area (including any barriers erected to enclose the permitted area).

*[Advice has been taken from the Council's Project Officer responsible for access issues. She reports that a wheelchair or double buggy would need 700 mm of space to pass. A motobility vehicle with its passenger stationary is approximately 700 mm in size. It may require additional space of manoeuvre. 1,500 mm represents the turning circle of a wheelchair.]*

### **3.0 Food Safety**

- 3.1 Preparation of food outside of the premises carries inherent risks in terms of the risk of the public coming into contact with hot surfaces, risks arising from the use of gas or electricity supplies or the use of equipment on the footpath and food safety concerns regarding outdoor food preparation.
- 3.2 There are also hygiene risks arising from the possibility of pests being attracted to the outside tables particularly with birds and insects which may impact upon general food hygiene.
- 3.3 The Council will therefore not normally be prepared to grant permission without a condition prohibiting the outdoor preparation of food and would normally impose conditions regarding the regular cleaning of the outside furniture.

### **4.0 Health & Safety**

- 4.1 Furniture on the highway does lead to obstruction. This may particularly impact upon those with visual impairments. There is a further risk to the public from hazards arising from such items as broken glass, food debris etc.
- 4.2 In granting permissions the Council will therefore normally impose conditions regarding the use of toughened glass or plastic for outside consumption of drinks, for barriers to be clearly visible with low tripping rails to assist the visually impaired, to require furniture to be removed from the permitted area when the premises are not trading, to require walkways through tables to be kept clear at all times, to require litter, refuse and food debris to be removed from the area regularly and to require permitted areas and adjoining footpaths to be washed down.

## **5.0 Environmental Issues**

- 5.1 The Council recognises the potential of external activities to cause nuisance to others.
- 5.2 The Council will therefore normally impose conditions preventing audible music within the highway, preventing nuisance or annoyance to others and limiting the hours of operation.

## **6.0 Consultation**

- 6.1 The Act prescribes a consultation framework for dealing with applications for permission. In particular it requires a notice to be affixed at or near the premises to which the proposal relates. Owners and occupiers of premises which appear to be materially affected will be served with notice by the Council.
- 6.2 In addition to the above statutory requirements, the Council will also notify the ward member or members in respect of the ward within which the premises are situated. The relevant town or parish council will also be notified. Finally the application will be passed to the Council's Environmental Health Department and Building and Surveying Department for comment.
- 6.3 Where a proposal relates to a section of the highway which is not immediately in front of premises owned or occupied by the applicant the Council may not grant permission without the consent of the owners and occupiers of the premises which front that section of the highway. Similarly where the proposal relates to a walkway, the Council may not grant permission without the consent of the owners and occupiers of the walkway.
- 6.4 Where the proposal relates to land which is public highway, the Council can only grant permission with the consent of Essex County Council as the highway authority.
- 6.5 Where representations have been received by the Council in response to the consultation process or if the applicant wishes to make submissions regarding the Council's standard conditions the Licensing Committee or (if power has been delegated the appropriate Area Panel) will hold a hearing to determine whether or not to grant consent and if so what conditions ought to be imposed.



**DRAFT CONDITIONS**

- 1 The permission shall be personal to the licensee and shall not be capable of being assigned.
- 2 The licensee shall not be permitted to make fixtures to or excavations of any kind in the surface of the highway which shall be left entirely undisturbed.
- 3 The permission shall extend to the area shown edged red on the plan attached to this permission only (herein after referred to as the “permitted area”).
- 4 The permitted area shall be used solely for the purpose of consuming refreshments by persons seated at the tables provided within the permitted area.
- 5 No charge shall be made by the licensee for the use of the furniture.
- 6 Waste from the licensee’s operations shall not be disposed of in the permanent litter bins provided by the Council.
- 7 Refuse, litter and food debris deposited on the highway in the vicinity of the chairs and tables must be collected and removed each day by the licensee at the licensee’s expense at the end of the operating period and more frequently as necessary and the licensee shall comply with all requirements of any public health legislation for the time being in force.
- 8 The permitted area shall be washed down as far as the kerbside at the end of the operating period to prevent the paved areas staining. The licensee shall take all necessary precautions to prevent hazards arising from this operation including the pooling of water and formation of ice.
- 9 The licensee shall remove the furniture from the permitted area at the end of the operational period and will not place or keep any furniture on the permitted area when the premises are not trading.
- 10 The licensee shall not cause or permit any nuisance or annoyance to users of the highway or owners or occupiers of neighbouring properties.
- 11 The licensee shall not permit any music from the licensee’s premises abutting the permitted area to be audible in the permitted area and adjoining highway above the ambient noise level.
- 12 Unless specifically authorised by the licence, the licensee shall not erect any barriers or other form of enclosure in or around the permitted area and where such barriers or other means of enclosure are authorised by this licence they

shall be of high visibility with a low tripping rail to be approved by the Council in writing.

- 13 The licensee shall at all times maintain a distance of at least 700 mm/800 mm/1,500 mm between any permitted barrier enclosing the permitted area or (if none) all furniture within the permitted area and the kerbside.
- 14 The licensee shall not prepare any food or drink within the permitted area.
- 15 Any glasses supplied by the licensee for the consumption of drinks in the permitted area shall be made of toughened glass or plastic.
- 16 The licensee shall regularly clean all furniture in the permitted area so as to prevent the attraction of pests (including birds and insects) and to promote general food hygiene.
- 17 Any walkways between tables and chairs within the permitted area shall be kept clear and unobstructed at all times.
- 18 This permission shall only authorise the use of the permitted area between the hours of [REDACTED] and [REDACTED].
- 19 The licensee shall pay to the Council for the provision of this permission the sum of £[REDACTED] for a period of 1 year from the date of the permission and thereafter on each anniversary of the first grant of the permission the sum of £[REDACTED] or such other sum as may be notified by the Council to the licensee in writing.
- 17 The licensee shall obtain the written approval of the Council to the design and type of furniture prior to the placing of any such furniture on the permitted area.
- 18 The licensee shall not place any furniture on the highway other than within the permitted area in accordance with the terms and conditions of this permission.
- 19 This permission may be terminated by the Council by giving the licensee not less than one month's notice in writing to expire at any time or in the event of the licensee failing to comply with any of the above conditions upon 24 hours notice in writing to the licensee.

The licensee's attention is drawn to section 115K Highways Act 1980 (Failure to Comply with Terms and Conditions) a copy of which is attached.