



EAST HAMPSHIRE DISTRICT COUNCIL

POLICY STATEMENT

LICENSING OF A FACILITY ON THE HIGHWAY

(TABLES, CHAIRS AND OTHER OBJECTS)

September 2015

## **CONTENTS**

Page No

<b>1. INTRODUCTION</b>	<b>3</b>
<b>2. APPLICATION</b>	<b>3</b>
<b>3. CONSULTATION</b>	<b>4</b>
<b>4. DETERMINATION OF APPLICATION</b>	<b>5</b>
<b>5. THE LICENCE</b>	<b>6</b>
<b>6. REFUSAL, SUSPENSION OR REVOCATION</b>	<b>7</b>
<b>7. OBJECTIONS AND APPEALS</b>	<b>7</b>
<b>8. ENFORCEMENT</b>	<b>8</b>

## **1.0 INTRODUCTION**

1.1 East Hampshire District Council (the Council) embraces the aim of a café style culture in its towns and villages; and recognises that the placing of tables and chairs on pedestrian areas of highway for the public to use to consume food and drink enhances this culture.

1.2 The Council has power to grant permissions for objects such as tables and chairs and portable advertising boards (a Facility) under Part VIIA Highways Act 1980 (the Act). The Act also gives the Council power to require the payment of reasonable charges for the grant of permission. Where the Council are not the owners of the subsoil beneath the part of the highway where permission is to be granted, then the charges may not exceed the standard amount. The standard amount being such charges as will reimburse the Council their reasonable expenses in connection with granting the permission. Where the Council are the owners of the subsoil beneath the part of the highway where permission is to be granted, then the charges may be set at such reasonable level as may be determined from time to time.

By definition, "The Highway" includes:

- (a) any road, footway, or other area to which the public have access without payment having the legal status of a highway, or
- (b) a service area as defined in section 329 of the Highway Act 1980, and also includes any part of a street.

1.3 In considering applications for permissions under the Act we 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 make a justifiable case for a departure from this policy then this 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 and legislation relating to food safety and health and safety at work. At the same time we recognise that the convenience and health and safety of both consumers and the wider public needs to be protected.

## **2.0 APPLICATION**

2.1 Applicants will be required to submit an application form, a plan to the scale 1:100 showing the positioning of the tables and chairs etc and or other objects and a licence fee. Details will be provided in separate application procedure notes.

## 3.0 CONSULTATION

3.1 The Act prescribes a consultation framework for dealing with applications for permission. In particular it requires the Council to:

- fix a notice at or near the premises to which the proposal relates and
- serve a copy on the owner or occupier of premises which appear to be materially affected

3.2 We will also carry out consultation with the following persons and organisations:

- the ward member or members in respect of the ward within which the premises is situated
- the relevant town or parish council
- Environmental Protection
- Economic Development
- Planning Department
- Revenues
- Health and Safety
- Hampshire County Council
- Hampshire Police
- Access Officer

3.3 For new applications, in addition to the above, we are required under the Act to seek the consent of adjacent property owners if we consider that they may be materially affected by the proposal.

3.4 Where a proposal relates to a section of the highway, which is not immediately in front of premises which are owner occupied by the applicant, we 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, we may not grant permission without the consent of the owners and occupiers of the walkway.

3.5 Where the proposal relates to land which is public highway, we can only grant permission with the consent of Hampshire County Council as the highway authority.

3.6 A 28 day consultation period will follow the date of the application, during which time we will consider representations. Representations received after this deadline will be considered only in exceptional circumstances.

## 4.0 DETERMINATION OF APPLICATION

4.1 The Service Manager for Environmental Health will use the criteria listed below in determining any licence applications. All should normally be satisfied, with appropriate weight applied to the criteria listed. Each case will be assessed on its merits and individual circumstances. Similarly, any written objections received will be considered in terms of relevancy and appropriateness to the application and the listed criteria. Frivolous, vexatious or repetitious observations will be disregarded.

### Criteria for determining applications

#### 4.2 Access

Whilst encouraging street cafes, we acknowledge the need of the public to pass along footpaths without the risk of coming into contact with vehicular traffic. In particular we are concerned that those using wheelchairs, mobility vehicles or buggies (including double buggies) should be able to pass on pavements. We would also expect adequate access to be made available to those with disabilities to the outside seating areas. We recognise 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.

#### 4.3 Food Safety and Litter

Preparation of food outside of the premises carries a 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. There are also food safety issues associated with outdoor food preparation.

There are also contamination risks arising from birds and insect pests being attracted to the outside tables due to food waste and litter.

We will therefore not normally be prepared to grant permission without a condition prohibiting the outdoor preparation of food and would normally impose a condition regarding the regular cleaning of the outside furniture and surrounding area.

#### 4.4 Health & Safety

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 such as broken glass, food debris etc.

In granting permissions we will therefore normally impose conditions regarding the following:

- use of ceramics, toughened glass or plastic for outside consumption of drinks
- barriers to be clearly visible with low tripping rails to assist the visually impaired
- furniture to be removed from the permitted area when the premises are not trading

- walkways through tables to be kept clear at all times
- litter, refuse and food debris to be removed from the area regularly and
- the permitted area to be washed down

#### 4.5 Environmental Issues

We recognise the potential of external activities to cause nuisance to others.

We will therefore normally impose conditions preventing audible music within the highway, preventing nuisance or annoyance to others and limiting the hours of operation.

#### 4.6 Planning Permission

The issue of a licence for tables and chairs does not confer upon the Licensee any planning permission and applicants will be advised to make their own arrangements to apply for planning permission. Applicants from (alcohol) licensed premises should note that they may also need to seek a variation (under section 34 of the Licensing Act 2003) to their Premises Licence to include the area in which the Facility is to be placed.

#### 4.7 Business Rates

The increase in size of premises area resulting from the grant of a licence for a facility may incur an increase in Business Rates. The Applicant is advised to contact the Business Rates Section for advice.

#### 4.8 Market Days

Where licences give consent to trade in the town centres they may not be able to do so on market days if the licensed area includes an area upon which a market is held.

### **5.0 THE LICENCE**

5.1 If the application is approved we will issue a licence and attach standard conditions. The licence may also contain other specific conditions as may be reasonably necessary. The licence shall be issued within 21 days of the decision.

5.2 A licence for any particular site has effect until it is cancelled, amended, revoked or surrendered, but is subject to an annual fee to maintain the use of the facility. East Hampshire will send a reminder to the licence holder not less than one month before the required payment date.

5.3 In all cases when the fee has not been submitted to the Council for renewal, the licence will be cancelled 21 days after the due date of the fee and a new application will have to be made.

5.4 If a cheque for a licence fee is dishonoured by a bank this will result in the revocation of the Licence issued by the Council unless payment of the outstanding fees is made in cash within 5 working days. In such cases an administration charge will be imposed on the licensee. If an application is refused we will retain a proportion of the fee to cover administration costs. The remainder will be refunded.

5.5 The licence when granted is personal to the named licensee/business and cannot be assigned. If the named licensee/business changes, a new permission licence will be required and the appropriate fee will be charged.

## **6.0 REFUSAL, SUSPENSION OR REVOCATION**

6.1 An application may be refused or a licence suspended or revoked on the following grounds:

- a significant effect on road safety would arise either from the siting of the Facility, or from customers visiting or leaving the licensed area
- where there are concerns over the recorded level of personal injury accidents in the locality where the tables and chairs will be sited
- there would be significant loss of amenity caused by traffic, noise, rubbish, potential for the harbourage of vermin, odour or fumes
- there is a conflict with Traffic Orders such as waiting restrictions
- the site obstructs either pedestrian or vehicular access, or traffic flows, or places pedestrians in danger when in use
- the tables and chairs obstruct the safe passage of users of the footway or carriageway
- the area to be licensed interferes with sight lines for any road users such as at road junctions, or pedestrian crossing facilities
- the site does not allow the Licensee, staff and customers to park in a safe manner
- the trading activity is carried out after dusk and the site is not adequately lit to allow safe access and egress from the site for both customers and staff
- the applicant/licensee, has failed, without reasonable excuse, to obtain a previous licence, or as the case may be, a current licence
- there is not enough space in the street for the applicant/licensee to place items upon the highway without causing undue interference or inconvenience to persons using the street. This is relevant even if the circumstances have reasonably arisen since the granting of a licence.
- the applicant/licensee is unsuitable to hold a licence by reason of having been convicted of an offence material to safety of the public, or public order, littering or pollution
- The applicant/licensee's premises have been the focus for incidents involving public disorder or nuisance.

## **7.0 OBJECTIONS AND APPEALS**

7.1 The Council's Licensing Committee has been established to consider applications and hear objections and appeals in relation to licensing matters.

7.2 The role of the Licensing Committee in respect of licences for a Facility on the highway will be to hear representations from applicants in cases where the application:

- has been refused by the Head of Environmental Services, or
- where the applicant objects to the imposition of a particular condition/s, or
- where a licence has been suspended.

7.3 The Highways Act 1980 does not allow any appeals against the decision of the Council in relation to the refusal to grant a Licence. A person aggrieved by a decision of the Council may seek a Judicial Review of the decision, should it be felt necessary.

## **8.0 ENFORCEMENT**

8.1 Failure to obtain an appropriate licence or failure to comply with the conditions attached to a licence will result in enforcement action being instigated. Any such enforcement action will be in accordance with the principles of Enforcement Concordat and the Council's enforcement policy.