

Report to the Licensing Committee

Report reference: LSC-009-2010/11

Date of meeting: 13th April 2011

Portfolio: Safer and Greener

Subject: Licensing Pavement Licences

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**Epping Forest
District Council**

Recommendations

- (1) To note the decision of the Council and to further consider the report.**
- (2) To recommend that the Council decides not to issue pavement licences**

Executive Summary:

1. At the last meeting of the Licensing Committee it resolved.
 - (a) That the issue of Pavement Licences by the Council under Section 115E of the Highways Act 1980 be noted;
 - (b) That the schedule of delegation, whereby applications for Pavement Licences would be determined by the Licensing Sub-Committee if an objection was received but otherwise delegated to Officers, be recommended to the Council for adoption;
 - (c) That the standard conditions to be attached to the Pavement Licences issued, with the additional condition from Essex Police for glasses taken out on to the Pavement to be made of toughened glass, be recommended to the Council for approval; and
 - (d) That the level of fees, £250 per annum for premises with five or more tables on the pavement and £150 per annum for premises with less than five tables, be recommended to the Council for adoption.
2. The Council discussed this recommendation and some concerns were raised as to the proposed levels of the fees and the report was referred back to the Licensing Committee.

Reason for Proposed Decision

3. The Licensing Committee have been asked to consider the report with particular regards to the licence fees that it was proposed should be charged.
4. That the Committee notes that there are likely to be a large number of premises in the

district that would be required to apply for a licence and that the procedure set out in the Act with regards to the granting of a licence and appeal procedures which are time consuming. For that reason it would not be possible to accommodate this work within the licensing section without further assistance and the previous report recommended a fee level that would cover staff and other costs.

Other Options for Action

5. The Licensing Committee could recommend that the Council issues these Pavement Licences and that the fees charged should cover the Council's costs of administration and enforcement of conditions. This would have the advantage of the Council being able to specify where tables and chairs were placed on the pavements and regulate the placing of A Boards. Further, the Council and the Highways Authority may find it easier to prosecute where an obstruction is occurring as the defendant could raise as a defence other unregulated tables etc. which the Council do not consider are causing an obstruction.

6. The Highways Act 1980 does require the Council to make a decision if an application is made and if a member of the public requires the Council makes a decision, the application would have to be referred to full Council. The Council did consider that the costs were too high and as there are no specific difficulties at present it is recommended that the Council adopts a policy not to grant licences.

Report:

7. The Highways Act 1980 allows applications to be made to this Authority for permission to place tables, chairs, portable advertising boards and similar objects on the pavements which are adopted as highways. Over recent years there have been an increasing number of such objects being placed outside cafes, restaurants, bars etc.

8. Essex County Council and the Council's own Town Centre manager approached the licensing section and asked if it would take action to regulate the placing of tables and chairs on the pavement as this practice was causing obstruction in some cases.

9. The County Council was concerned that if the District failed to issue such licences any court proceedings for obstruction taken by themselves or the District Council could be prejudiced as the defendant could claim that there would be no mechanism for the person concerned to apply for a licence in place.

10. The Highways Acts 1980 sets out the procedure to be followed when an application for a licence is made. It provides that once an application is made the licensing officer:

- must undertake consultations,
- prepare a notice and place this outside the premises, and
- serve notice on neighbouring properties that are affected
- consult with the highways authority,
- consult with the planning authority

11. The consent of the owner of any property adjoining the area of pavement must be obtained. The consent of the adjoining owner must not be unreasonably withheld. The question as to whether consent has been unreasonably withheld must be referred to an arbitrator and the procedure in the Act followed. If there were any objections then the application would have to be referred to the Licensing Sub-committee for decision.

12. When the licence is granted it will be made subject to a number of conditions and it

will be necessary to monitor compliance and enforce against any breaches of conditions.
 13 The suggested fee in respect of a consent of £125 per annum for 5 or more tables (and associated chairs) and £75 per annum for 5 and under. If only chairs, boards or other items are placed on the footpath a fee of £75 will be applicable

14. A list of suggested delegations are set out below.

DELEGATION OF FUNCTIONS

Matter to be dealt with	Full Committee	Sub Committee	Officers
Application for permission to place objects on the highway		If an objection	If no objection made
All policy matters except the formulation of the policy relating to these permits	All cases		

15. Attached to this report below are the proposed conditions of the consent recommended by the Senior Licensing Officer

Resource Implications:

None...

Legal and Governance Implications:

Section 115E of the Highways Act 1980 gives local authorities the power to grant permission to erect and use a facility on the highway (e.g. tables and chairs and portable advertising board)

Section 115F of the Highways 1980 Act gives the local Authority power to require a payment of such reasonable charges for the grant of a permission issued under section 115E of the 1980 Act and, section 115F gives the authority power to impose conditions

Safer, Cleaner and Greener Implications:

The Council Plan 2006 – 2010 – As Safe Community

Consultation Undertaken:

None.

Background Papers:

None

Impact Assessments:

Risk Management

N/A

Equality and Diversity:

Did the initial assessment of the proposals contained in this report for relevance to the Council's general equality duties, reveal any potentially adverse equality implications? No

Where equality implications were identified through the initial assessment process, has a formal Equality Impact Assessment been undertaken? No

What equality implications were identified through the Equality Impact Assessment process?

No

How have the equality implications identified through the Equality Impact Assessment been addressed in this report in order to avoid discrimination against any particular group?

None

Standard Consent Conditions – Highways Act 1980

1. Except with the previous written consent of the Council, only the amenities detailed on the consent are to be placed on the public highway, and the amenities are only to be placed on the public highway between the times detailed on the consent on the permitted area specified in the consent.
2. Any heaters must be to BS Standards (BS EN 60529:1992 (Electric heaters) and BS EN 14543:2005 (Gas heaters)). Access to the controls/pipe/cylinder on the heaters must be restricted to authorised employees of the premises only. .
3. The Council may require the boundary of the permitted area to be defined by shall be a fixed barrier system that is suitably stable not to be easily blown or knocked over.
4. Clear access to the entrance of the adjoining premises must be maintained at all times.
5. The permit holder is not permitted to make any fixtures, or excavations of any kind, to the surface of the highway without prior written approval of the Council.
6. The permit holder is not permitted to erect the amenities other than in accordance with the provisions of the permit.
7. The permit holder is not to make or cause to be made any claim against the Council in the event of any property of the permit holders becoming lost or damaged in any way from whatever cause.
8. The permit holder is to indemnify and keep indemnified the Council from and against all actions, costs, claims, proceedings, demands and liability, which may at any time arise or be incurred in consequence of the placing and maintaining the amenities on the highway or their removal from the highway.
9. The permit holder will hold a Public Liability Insurance indemnity policy throughout the term of the permit up to the value of £5 million against any liability, loss or damage, claim of proceeding whatsoever arising under Statute or Common Law in respect of the placing and maintaining the Street Furniture on the highway or their removal. The applicant is required to submit proof of this insurance prior to the licence being issued.
10. At the instruction of the Council to remove the Street Furniture during the permit period for the purpose of:
 - (a) Works in or under or over the highway or for using it in connection with works in, under or over land adjacent to or adjoining it as may be required by Epping Forest District Council, the local highways authority or any statutory undertaker or other person authorized by the Council.
 - (b) Use by emergency services.

(c) Any other reasonable cause.

11. Not to cause a nuisance to persons using the highway or any adjacent land or premises. The permit holder is responsible for the keeping of good order within the boundary of the permitted area.
12. To remove the amenities immediately at the end of the permit period or on any sooner revocation of the licence.
13. To reinstate the highway in the event of a breach of the permit. To reimburse Epping Forest District Council if, as a result of a breach of the permit conditions, it is required to carry out any reinstatement works itself.
14. To keep the permitted area free of litter and rubbish, including staining from food and drink spillages.
15. The permitted area must be washed down thoroughly, at the end of every day, using a method sufficient to remove food debris, grease and other spillages that may occur.
16. To make arrangements to regularly check for and to remove litter and rubbish on pedestrian walkways, caused by persons using the amenities, for a distance of up to 10 metres from the boundary of the permitted area.
17. The footway must not be obstructed by patrons standing between tables and between tables and chairs and the curb.
18. The amenities must be removed from the public highway at the end of the permitted period each day and in any event they must be removed when the business is not trading.

Note: Permission to place tables and chairs on the highway does not exempt the applicant from complying with any other legislation applying to the premises. In particular, where the premises are licensed for the sale of alcohol, an extension to the liquor licence must be obtained. Planning permission may also be required.