



# ISLE OF WIGHT COUNCIL

## **Permissions for the Placing of Tables, Chairs and Other Objects on the Highway Policy**

## Document Information

<b>Title:</b>	<b>Permissions for the Placing of Tables, Chairs and Other Objects on the Highway Policy</b>
<b>Status:</b>	<b>Draft for Consideration of the Executive</b>
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<b>Consultation:</b>	Internal, External Customers and The Public
<b>Approved by:</b>	The Executive
<b>Approval Date:</b>	24 March 2015
<b>Review Frequency:</b>	Every Five Years
<b>Next Review:</b>	By 24 March 2020

Version History		
Version	Date	Description
V1	September 14	Initial Draft for Consideration
V2	December 14	Draft for Consultation
V3	February 15	Draft for Consideration by Licensing Committee
V4	February 15	Draft for Consideration of the Executive
Final	March 15	Approved by the Executive

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## 1. Introduction

- 1.1 This policy will become effective on 1 April 2015 and will be reviewed every 5 years thereafter.
- 1.2 This document sets out the Isle of Wight Council's policy ("the Policy") regarding the permission to grant a person to place and use objects or structures on, in or over a highway as allowed by Section 115E of the Highways Act 1980.
- 1.3 All legislative amendments will be made automatically; all other changes will be subjected to a twenty eight day consultation period. Any representations will be determined by the Licensing Committee.
- 1.4 The issue of a Highway Amenity Permission does not confer upon the holder any planning permission and applicants will be advised to make their own arrangements to apply for planning permission if required.
- 1.5 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.
- 1.6 The granting of permission under the Act does not relieve the applicant of the requirement to comply with all other legislation including legislation relating to planning, street trading, food safety and health and safety.
- 1.7 This policy does not relate to the placing of litter bins, advertising banners, skips, scaffolding, hoardings or other structures, building materials or cranes on the highway.
- 1.8 Any object which is used to offer an article for sale which does not require street trading consent will still require permission under this policy.
- 1.9 Any departure from this Policy must be justified in writing and approved by a member of the Regulatory Services Management Team.

## 2 Legislation

- 2.1 Section 115E of the Highways Act 1980 provides the council with the power to allow Local Authorities to grant permission to a person to use objects or structures on, in or over a highway to which Part VIIA of the Act applies:
  - i. for a purpose which will result in the production of income;
  - ii. for the purpose of providing a centre for advice or information; or
  - iii. for the purpose of advertising;
- 2.2 Section 115F of the Act provides the power to impose conditions on permissions under section 115E, including conditions requiring the payment to the council of reasonable charges.

- 2.3 Highway Amenity Permission, will not be required if the objects or structures are being placed on the applicant's land and the land is not a part of a highway as defined by Part VIIA section 115A of the Highways Act 1980.

### **3 Definitions**

- 3.1 The following definitions will provide clarification for the purposes of this policy.

3.2 The Act

This refers to the Highways Act 1980 (or any subsequent legislation).

3.3 The Policy

This refers to Isle of Wight Council's Highway Amenity Permissions Policy.

3.4 The Council

This means the Isle of Wight Council.

3.5 Permission

The written document issued by the council, granting permission to a person to use objects or structures on, in or over a highway to which Part VIIA of the Act applies:

- i. for a purpose which will result in the production of income;
  - ii. for the purpose of providing a centre for advice or information; or
  - iii. for the purpose of advertising;
- pursuant to section 115E of the Act .

The Permission may include relevant conditions.

3.6 Highway

For the purposes of Highway Amenity Permissions the areas covered by this Policy are defined under Part VII 115A of the Highways Act 1980, being:

- a) a highway in relation to which a pedestrian planning order is in force; .
- b) a bridleway;
- c) a footpath (including a walkway as defined in section 35(2);
- d) a footway;
- e) a subway constructed under section 69;
- f) a footbridge constructed under section 70;
- g) a highway of a description not mentioned in any of the preceding paragraphs of this definition whose use by vehicular traffic is prohibited by a traffic order but whose use by other traffic is not prohibited or restricted or regulated by such an order; and
- h) a local Act walkway

3.7 Carriageway

A part of the Highway laid out for the use by motor vehicles (including Cycle lanes and lay-bys, but excluding Footways, Cycle ways, Cycle paths and paved verges).

### 3.8 A-Boards

A free standing removable object used to advertise or promote a business, service or activity or used in conjunction with that business, service or activity.

### 3.9 Object

An object includes:

- Tables,
- Chairs,
- benches;
- parasols;
- patio heaters; and
- any other object which may cause an obstruction on the highway including any object used to offer articles for sale.  
(For the purposes of this policy A Boards, planters, litter bins, advertising banners, skips, scaffolding, hoardings or other structures, building materials or cranes are not included).

## 4 Considerations When Determining an Application

### 4.1 Public Safety

Whether the Highway Amenity Permission activity represents, or is likely to present,

- A substantial risk to the public by obstructing the highway or any other right of way;
- Any other matter presenting a risk to the public, nearby businesses, property or residential premises.

### 4.2 The Prevention of Nuisance

Whether the Highway Amenity Permission activity presents, or is likely to present, a substantial risk of nuisance to the public from litter, noise or odour, particularly in residential areas.

### 4.3 Prevention of Crime and Disorder

Whether the Highway Amenity Permission activity presents, or is likely to present, an increased risk of crime and/or disorder.

### 4.4 Visual Impact

Consideration will be given to the design and livery of any proposed tables and chairs or other object as to whether it is in-keeping with the amenity, environment and character of the area.

## 5 Application Process

### Applications

5.1 All applications will not be accepted where:

- The proposed position of the object reduces the pedestrian walkway to less than 1.5 meters (dependant on location, this may be greater).
- The distance between the closest edge of the object to the road/pavement edge is to be less than 0.45 meters.
- The proposed position of the object includes any part of the carriageway.
- Any part of the object would be within the visibility splay of a junction.

However consideration may be given in circumstances where the proposed object position does not meet these requirements but the carriageway is subject to a Prohibition of Vehicles (pedestrianised area).

- 5.2 The application must be received by the Council at least two months and not more than six months prior to the date on which the applicant wishes to commence utilising the permission or an existing permission is due to expire.
- 5.3 Applications must submitted using the prescribed form to the Licensing Department and must be accompanied by the following:
- 25% of the application fee;
  - A plan, preferably to the scale 1:100 or 1:50, showing the area requiring permission, the proposed location of the tables and chairs and/or any other objects.
  - For A-boards or any other object application, a photograph and the exact size of the proposed object;
  - Proof of the applicant's public liability insurance. The minimum value insured shall be £5 million;
  - Confirmation from the Council's Development Control Department detailing whether or not planning permission is required;
  - Written permission from the landowner if the land is not owned by the Council; (permission to use council land may or may not be granted during the consultation).
  - A site specific risk assessment.
- 5.4 The Council will affix an A4 notice in a conspicuous position at or as near as possible to the site to which the application relates within 5 working days after submission of the Highway Amenity Permissions application to the Licensing Authority.
- 5.5 The notice will be printed on yellow coloured paper headed New Street Permission Application. The text will be at least font size 16 and will provide the following information:
- Applicants name;
  - The proposed location(s) of the table and chairs and/or other objects;
  - The days and times they will be in place;
  - Start and end date of consultation period during which representations regarding the application may be made to the council;
  - Details of where any representations should be sent.

- 5.5 The Council will also serve a copy of the notice on the owner or occupier of premises which appear to be materially affected.
- 5.6 The Council will not grant the permission to which the notice relates until it has taken into consideration all representations made in connection with the proposed permission received within the period specified in the notice.
- 5.7 Failure to comply fully with the requirements outlined in paragraphs 5.1 to 5.3 may render the application invalid.
- 5.8 If the application is approved, the remaining balance of the application fee and the land hire charge (if applicable) will be due before the permission is issued.
- 5.9 If the application is not successful the 25% deposit or any other fees received will be returned to the applicant.

### **Variations**

- 5.10 Any variation to an existing street permission must be made on the prescribed form submitted to the Licensing Department and must be accompanied by the following:
- The full variation fee;
  - details of the proposed variation;
  - A plan, preferably to the scale 1:100 or 1:50, showing the area requiring permission, the proposed location of the tables and chairs and/or any other objects.;
  - For A-Boards or any other object application, a new photograph and the exact size of the proposed object;
  - Confirmation from the Council's Development Control Department detailing whether or not planning permission is required;
  - Written permission from the land owner and confirmation that they are aware of the proposed variation (if applicable).

## **6 Fees & Charges**

- 6.1 The council will set a fee for the grant of a permission following receipt of an application and a separate fee to grant a variation to an existing permission.
- 6.2 In addition to the above two fees a land hire charge will also be levied if the tables and chairs or any object is placed on highway owned and/or maintained by the Council.
- 6.3 The Licensing Department will publish fees and charges for the following:
- 6.3.1 the grant of an application;
  - 6.3.2 the grant a variation to a permission;
  - 6.3.3 Land Hire charge.

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- 6.4 The land hire charge will be per year but will be charged pro rata depending on the period that the application relates to. No other fees will be charged pro rata.
- 6.5 A minimum of 25% of the application fee will be paid on application.
- 6.6 If the application is not granted, all fees received by the council will be returned to the applicant.
- 6.7 The remaining balance of the application fee and any land hire charge must be paid in full before the Highway Amenity Permission is issued.

## 7 Consultation

- 7.1 To enable the council to determine whether a Highway Amenity Permission should be granted, it will carry out a consultation on each application.
- 7.2 The consultation period is 28 days and will commence the first working day after the publication of the notice.
- 7.3 All applications will be made available to view online at the Council's website for the duration of the consultation period.
- 7.4 The following organisations will be notified by the Council and will be able to provide representations to all applications:
- Local Elected Member;
  - The relevant Parish or Town council;
  - Fire Authority;
  - Hampshire Constabulary;
  - Planning Authority;
  - Environmental Health;
  - Licensing Authority;
  - IWC PFI Contracts Team;
  - Island Roads;
  - Parking Services;
  - Isle of Wight Amenity Land Hire/Parks and Esplanades.
- 7.5 In addition the Council will also consider any representation received from any other party.
- 7.6 Representations can be received regarding any issue, however when determining the application the Council will give particular attention to the following areas:
- Public Safety;
  - Prevention of Crime and Disorder;
  - Prevention of Nuisance;
  - Visual Impact.

- 7.7 Representations must be made in writing and must include the following:
- The name and address of the person or organisation making the representation;
  - The premises to which the representation relates;
  - The reason and justification for making the representation.
- 7.8 The Licensing Department will not consider representations that are believed to be frivolous, vexatious, or which relate to moral grounds.
- 7.9 A vexatious representation is generally taken to be one which is repetitive, without foundation or made for some other reason such as malice.
- 7.10 A frivolous representation is generally taken to be one that is lacking in seriousness.

## 8 Determination

- 8.1 All applications will be determined within **20 working days** following the last working day of the consultation period stated in the notice, unless a longer period is agreed by all parties.
- 8.2 Permission can only be granted once the Council has obtained consent from the frontages with an interest.
- 8.3 In considering whether it thinks fit to grant an application for a Street Permission, or an application for the renewal of a Street Permission the council will give particular consideration to the following:
- Public Safety;
  - Prevention of Crime and Disorder;
  - Prevention of Public Nuisance;
  - Visual Impact.
- 8.4 However all representations made to the council in connection with the proposal within the period specified in the notice will be taken into account.
- 8.5 The licensing authority will give the appropriate amount of weight to each representation. The weighting will be based on the evidence supplied as well as the experience and professional knowledge of the person or organisation making the representation.
- 8.6 When considering an application the Council may take into account:
- Any adverse impact arising from the placing of an object; and
  - Whether appropriate measures have been agreed and implemented by the applicant to mitigate any adverse impacts.
- 8.7 If there are no valid representations received, the application will be granted without the need for a hearing.

- 8.8 A Highway Amenity Permission will not be granted for more than 12 months.
- 8.9 If valid representations are received during the consultation period and cannot be resolved by an officer between the applicant and the person making the representation, the application will be determined by the Licensing Sub-Committee at a hearing.
- 8.10 The applicant and any persons who have made representations may attend the hearing and will have the opportunity to address the Sub-Committee during the hearing.
- 8.11 The Council has the discretion to consider any relevant representations received after the consultation period for applications where a hearing has been arranged.
- 8.12 If approved, a Highway Amenity Permission will be issued detailing the duration of the licence, the area where the objects can be placed and any conditions the Council consider reasonably necessary and subject to any other conditions as the council thinks fit.
- 8.13 The objects will not be permitted to be placed on, under or above the highway until all relevant fees and charges have been paid and the written Permission has issued to the applicant. The object can only then be placed in accordance with the Permission.
- 8.14 Where the Council refuse to grant Highway Amenity Permission, it shall provide in writing a statement of the reasons for its decision within seven days of the hearing.

## **9 Conditions**

- 9.1 Under section 115F of the Act the Council is permitted to attach conditions and restrictions on the Highway Amenity Permission that they consider reasonably necessary.

## **10 Appeals**

- 10.1 The Highways Act 1980 does not allow any appeals against the decision of the Council in relation to the refusal to grant a permission.

## **11 Enforcement**

- 11.1 If a person fails to comply with the conditions contained in their permission, the council may serve a notice on him requiring him to take steps to remedy the non-compliance within a specified time. If the person fails to take these steps the council may take action themselves.

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- 11.2 The Council may recover any expenses incurred by them undertaking an action to resolve the non-compliance which may also include interest from the date of service of a notice of demand for the expenses.
- 11.3 If items are removed by the Council and the expenses are not settled with 60 days after service of a notice of demand for the expenses, all items will be destroyed.
- 11.4 If objects are placed on the highway without prior permission enforcement action may be taken, which could ultimately result in removal of the object.
- 11.5 Before any enforcement action is taken the owner of the object will be given ample opportunity to submit an application to obtain permission.
- 11.6 If an object is removed when permission has not been granted the object will be detained and any costs recovered as per paragraph 11.2 above.

## **12 Surrender**

- 12.1 The council will only deem that the permission has been surrendered once written confirmation has been received and where possible, the permission has been returned to the Licensing Department.
- 12.2 The fee will not be refunded when a permission is surrendered. Any land hire charge received for any period after the surrender date will be returned.