



**Isle of Wight  
Council**

**STREET FURNITURE  
LICENSING POLICY**

**Highways Act 1980 (Section 115E)**

DRAFT

## Document Information

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## Contents

	Document Information .....	2
	Contents .....	3
1	Aim of the Policy .....	4
2	Introduction .....	5
3	Legislation.....	6
4	Definitions .....	7
5	Considerations .....	8
6	Application Process.....	10
7	Fees & Charges .....	13
8	Consultation .....	14
9	Determination.....	15
10	Conditions .....	16
11	Enforcement.....	17
12	Related Documents.....	18

# 1 Aim of the Policy

- 1.1 Street furniture, well-chosen and appropriately sited can enhance and complement their location. Carefully considered street furniture and materials can help strengthen character, improve the quality of the streetscape, and provide people with the things they need to enjoy the area they are situated in. Without careful consideration, street furniture can have the opposite effect.
- 1.2 Isle of Wight Council supports and encourages the effective use of street furniture and recognises that their provision can make a positive contribution to the street scene by providing facilities for people who visit, work, or live on the island aiding the local economy and maximising the use of public space.
- 1.3 This policy is intended to help businesses understand where the placing of objects or structures on the highway might be permitted. However, the Council will require that any amenity permissions are maintained to a high standard and that robust enforcement action will be taken to ensure that obstruction to the highway is kept to a minimum.

## 2 Introduction

- 2.1 This policy will become effective on xxxx and will remain in place until significant changes are required.
- 2.2 All legislative amendments and other minor changes will be made without the need for a further consultation.
- 2.3 Major changes will be subjected to a twenty-eight-day consultation period. Any representations will be determined by the Licensing Committee.
- 2.4 This document sets out the Isle of Wight Council's 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.
- 2.5 Applicants from alcohol licensed premises should note that they may 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.
- 2.6 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.
- 2.7 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.
- 2.8 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.
- 2.9 In considering this guidance the Council will be mindful that each case must be considered on its merits and, where the circumstances demand, the licensing authority may depart from this policy.

### 3 Legislation

- 3.1 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
- 3.2 Section 115F of the Highways Act 1980 provides the power to impose conditions on permissions under section 115E, including conditions requiring the payment to the council of reasonable charges.
- 3.3 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.

## 4 Definitions

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

### **The Act**

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

### **The Policy**

4.3 This refers to Isle of Wight Council's Street Furniture policy.

### **The Council**

4.4 This means the Isle of Wight Council.

### **Permission**

4.5 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

### **Highway**

4.6 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.
- h) paragraphs of this definition whose use by vehicular traffic is prohibited.

### **Carriageway**

4.7 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).

### **A-Boards**

4.8 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.

### **Object**

4.9 An object includes:

- Tables.
- Chairs.
- Benches.
- Parasols.
- patio heaters.
- any other object which may cause an obstruction on the highway including any object used to offer articles for sale.

## 5 Considerations

### Legal Considerations

- 5.1 The area for any amenity permission must be a highway as defined by Section 115A of the Highways Act 1980 (“the Act”), being:
- A highway in relation to which a pedestrian planning order is in force.
  - A bridleway.
  - A footpath (including a walkway as defined in Section 35(2) of the Act.
  - A footway.
  - A subway constructed under Section 69 of the Act
  - A footbridge constructed under Section 70 of the Act
  - A highway 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
  - To a local Act walkway.
- 5.2 The Council may grant permission to place objects or structures on the highway in accordance with Section 115E of the Act. These objects or structures are termed “amenities” and although no strict statutory definition is given, could include such things as, but not limited to:
- Tables, chairs, and parasols.
  - Goods, for example fruit and vegetables or flowers outside a shop premises.
  - Planters.
  - Barriers, screens or enclosures to contain tables, chairs and/or outside designated smoking areas etc.
  - “A” Boards or other advertising boards.
- 5.3 It is important to note that any person who, without lawful authority or excuse, in any way wilfully obstructs the free passage along a highway commits offence(s) contrary to section 137 of the Act.

### Public Safety Considerations

- 5.4 Whether the Highway Amenity Permission activity represents or is likely to present substantial risk to the public by obstructing the highway or any other right of way.
- 5.5 Any other matter presenting a risk to the public, nearby businesses, property or residential premises.
- 5.6 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.
- 5.7 Whether the Highway Amenity Permission activity presents, or is likely to present, an increased risk of crime and/or disorder.

### Design Considerations

- 5.8 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.
- 5.9 Before any amenity use on the highway is proposed or granted, the following issues will need to be considered:

### Space



- 5.10 The size of the amenity area will depend on the type of usage and the actual space available. Each case will be determined on its own merits with the overriding principle being that public safety is paramount. There must always be sufficient room for pedestrians and others to safely use the footpath.
- 5.11 Access to fire hydrants must also be maintained. A minimum clearance width of between 1.8 and 2 metres must be maintained between the outer edge of any amenity and the edge of any vehicular trafficked edged or other defined carriageway. This is to allow safe movement for pedestrians, wheelchairs, mobility scooters, prams and visually or physically impaired people.
- 5.12 For pedestrian and/or shared service areas, any amenity must be sited to provide sufficient width (using the above clearance guidelines if applicable) for all users to pass freely. Additional width may be required in areas where there is a high volume of pedestrian traffic or where there are several permanent obstructions such as trees or other street furniture. The extent of the amenity area must be clearly defined.

### **Means of Enclosure**

- 5.13 Any premises that provide seating for customers on the highway will be required to place barriers around or at either end of the seating. The reason for this requirement is to create a defined separation between pedestrians and the patrons of the licensed area.
- 5.14 Other uses for such enclosures may also include presenting areas for patrons who wish to smoke or to control queues of customers waiting to gain access to the premises. Barriers or similar structures must have solid horizontal bars/elements at appropriate height(s) above ground level so as to be detectable by a stick (“tapping rail”).
- 5.15 Barriers must be a contrasting colour to any furniture and/or pavement to aid visual identification. The height of any barrier must not exceed 1.5 metres unless otherwise authorised by the Council. The means of enclosure must be removed from the highway when outside of the times authorised by the permission. The design of any barrier(s) should complement the character of the surrounding area and the Council may require the enclosure to be of a specific design in order to maintain continuity along the street frontage.
- 5.16 Applicants are advised to seek approval from the licensing authority for any proposed barriers. If premises provide unsuitable barriers, they will be required to remove them and replaced with appropriate ones.
- 5.17 Where any permission is granted to allow patrons to smoke outside, that amenity area will need to be closely managed by the licence holder to ensure that patrons using the area do not overspill or exceed the recognised area. Containers for smoking litter will need to be provided.

### **Furniture Design**

- 5.18 Tables and chairs should be of a high quality and robust. They should be separate and of a design to allow use by disabled or wheelchair users and their design, materials and colour should complement the area they are used in. Care must be taken in ensuring that the feet or resting points of tables and chairs do not create pressure points which could damage the road or footpath surface. (Repairs to such surfaces will be at the permit holder’s expense).
- 5.19 Planters must be light enough to be removed on a daily basis but stable enough to resist movement due to extreme weather conditions and must not be allowed to become litter receptacles. They should not extend beyond the amenity area or stain the paving or road surface. They should be well maintained with a vibrant array of bedding plants or flowers. They should be of a contrasting colour to the surrounding area so they do not become a tripping hazard to people with a visual impairment.

- 5.20 Parasols must not extend beyond the amenity area and their lowest point should be 2 metres from the ground. They must be secured at the base so as not to blow over or away in winds and as with tables and chairs, must be robust and high quality.
- 5.21 If patio heaters of any sort are proposed, the application must be accompanied by a full description of the type of heater together with a detailed risk assessment to include energy efficiency and an environmental impact statement. It is the responsibility of the applicant to notify his/her insurers of the use of such equipment and approved in accordance with the terms of the policy of public liability insurance.

### **Environmental Implications and Other Considerations**

- 5.22 The amenity area must be always kept clean and litter free. Evidence of a scheduled cleaning record shall be provided upon request. Persons must also ensure that litter straying into neighbouring areas is removed. Ashtrays or similar receptacles must be provided in amenity areas where smoking takes place.
- 5.23 Consideration should be given to the division of amenity areas, where space permits, into smoking and non-smoking sections, with each section clearly marked.
- 5.24 External public address systems will not be permitted. The playing of live or recorded music may also be subject to statutory control and you should make your own enquiries accordingly.
- 5.25 Applicants will need to address and control any potential nuisance(s) caused by their patrons. Inappropriate behaviour may lead to a formal notice being given to require an improvement. It is vitally important that the needs of other persons are fully considered. This includes neighbours, nearby residents, passers-by, emergency services, deliveries, utility companies requiring access to manholes, gas and water mains, access to hydrants by the fire service together with refuse collections. Market and event vehicles must also be considered.

### **Health & Safety**

- 5.26 It is the responsibility of the applicant/amenity holder to ensure that any equipment complies with all relevant legislation and statutory requirements whether this be food hygiene, health & safety, food safety and alcohol sales requirements where applicable. Holders will be responsible for securing insurance cover and for indemnifying the Council against public liability claims from members of the public arising from the provision of any amenity on the highway. Any damage to Council property caused because of the provision of the amenity, will be repaired by the Council with all costs recharged to the business in question.

### **Variations**

- 5.27 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 planning permission is required.
  - Written permission from the landowner and confirmation that they are aware of the proposed variation (if applicable).

## **6 Application Process**

- 6.1 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.
- 6.2 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).
- 6.3 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.
- 6.4 Applications must submit 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(s).
  - Proof of the applicant's public liability insurance. The minimum value insured shall be £10 million.
  - Confirmation from the Council's Development Control Department detailing whether 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.
- 6.5 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.
- 6.6 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.
- 6.7 The Council will also serve a copy of the notice on the owner or occupier of premises which appear to be materially affected.
- 6.8 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.
- 6.9 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.

6.10 If the application is not successful, the 25% deposit or any other fees received will be returned to the applicant.

## 7 Fees & Charges

- 7.1 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.
- 7.2 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.
- 7.3 The Licensing Department will publish fees and charges for the following:
- The grant of an application.
  - The grant a variation to a permission.
  - Land Hire charge.
- 7.4 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.
- 7.5 A minimum of 25% of the application fee will be paid on application.
- 7.6 If the application is not granted, all fees received by the council will be returned to the applicant.
- 7.7 The remaining balance of the application fee and any land hire charge must be paid in full before the Highway Amenity Permission is issued.

## 8 Consultation

- 8.1 To enable the council to determine whether a Highway Amenity Permission should be granted, it will carry out a consultation on each application.
- 8.2 The consultation period is 28 days and will commence the first working day after the publication of the notice.
- 8.3 All applications will be made available to view online at the Council's website for the duration of the consultation period.
- 8.4 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.
  - Isle of Wight Council Highways Team.
  - Island Roads.
  - Parking Services.
  - Isle of Wight Amenity Land Hire/Parks and Esplanades.
- 8.5 In addition, the Council will also consider any representation received from any other party.
- 8.6 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.
- 8.7 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.
- 8.8 The Licensing Department will not consider representations that are believed to be frivolous, vexatious, or which relate to moral grounds.
- 8.9 A vexatious representation is generally taken to be one which is repetitive, without foundation or made for some other reason such as malice.
- 8.10 A frivolous representation is generally taken to be one that is lacking in seriousness.
- 8.11 However, all representations made to the council in connection with the proposal within the period specified in the notice will be considered.
- 8.12 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.

## 9 Determination

- 9.1 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.
- 9.2 Permission can only be granted once the Council has obtained consent from the frontages with an interest.
- 9.3 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.
- 9.4 If there are no valid representations received, the application will be granted without the need for a hearing.
- 9.5 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.
- 9.6 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.
- 9.7 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.
- 9.8 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.

## 10 Conditions

- 10.1 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.



## 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 act themselves.
- 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 apply 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 above.

## 12 Related Documents

- Corporate Plan
- Street Furniture Permits and Pavement Licences

[Corporate Plan 2021 - 2025 \(iow.gov.uk\)](https://www.iow.gov.uk/corporate-plan-2021-2025)  
[Street Furniture Permits and Pavement Licences \(iow.gov.uk\)](https://www.iow.gov.uk/street-furniture-permits-and-pavement-licences)