

**BRISTOL CITY COUNCIL
LICENSING COMMITTEE
8 APRIL 2010**

**POLICY FOR REGULATING THE PLACING OF TABLES AND CHAIRS ON
THE HIGHWAY**

(Ward: City wide)

Report of the Director of Neighbourhoods

Purpose of Report

1. Members are asked to approve for consultation purposes a policy for regulating the placing of tables and chairs on the highway.

Background

2. Section 115 (E)(1)(b)(i) of the Highways Act 1980 provides the council with powers to regulate the placing of tables and chairs on the highway. This power is currently exercised by highway officers who informally agree suitable arrangements for the placing of tables and chairs following discussion with the trader and the police. This approach has been successfully applied for a number of years and represents a sensible balance between the commercial needs of traders and ensuring that public safety is not compromised. However since the introduction of smoking regulations the position has changed as greater use is being made of outside areas leading to an increase in concerns from local communities, primarily in relation to public nuisance. In some parts of the city, Clifton village for example, the arrangement of tables and chairs outside of some licensed premises has created difficulties for wheelchair users. Aesthetically it is also noticeable that the increase in the variety of street furniture being used by traders does not always contribute to the street scene.

Proposal

3. In order to address these issues it is proposed to enhance the control of this activity. This will be managed by the council's Safer Bristol Licensing team and will compliment the existing activity undertaken by that team with regard to their responsibilities under the Licensing Act. Many of the traders that make use of the highway are also licensed for various activities under the Licensing Act therefore the operation and enforcement of this proposed regime will make use of the skills already present within the Licensing team. A copy of the draft policy is attached at Appendix A.

Consultation

4. Officers have liaised with other council teams in formulating the draft policy and now propose to consult with the following persons:-
 - (a) Avon and Somerset Police
 - (b) Holders of Premises licenses under the Licensing Act 2003
 - (c) Local residents groups
 - (d) Local business representatives

The draft policy will also be available on the council's consultation web pages. Officers propose to run a six week consultation on the proposals after which it is proposed that the results of the consultation are presented to a special meeting of the Licensing Committee Special Purposes Sub Committee at which the responses can be taken into account when considering adoption of policy to guide this area of work. Officers propose an implementation date of 1 July 2010.

Legal Implications

5. This report concerns a function under the Highways Act. It is not a Licensing Act function. It falls within this committee's terms of reference because the Council has exercised its powers under section 7 of the Licensing Act 2003 to enable this Committee to be responsible for functions which are related to Licensing Functions.

The Highways Act 1980 empowers the council to grant permission, among other things, to use objects or structures on, in or over most highways in the City. Certain formalities apply in some cases, e.g. the giving of Notices and the obtaining of consent of frontagers, as is reflected in the process set out in the report.

Subject to certain provisos, permission may be granted upon such conditions as the council thinks fit, including conditions requiring the payment to the council of such reasonable charges as they may determine.

The discretion to impose conditions is very wide, except that unless the Council owns the subsoil beneath the part of the highway in relation to which the permission is granted, the charges may not exceed the standard amount, which in the case of the permission referred to in this report means such charges as will reimburse the council their reasonable expenses in connection with granting the permission. In other words, unless it is itself the landowner the council is limited to recovering the reasonable costs of administering the regime and cannot use it to raise additional

revenue. Where the Council is the owner of the sub soil of the highway in question then the charge may include an amount to reflect the use of the Council's land.

The council has the right to require an indemnity against any claim in respect of injury, damage or loss arising out of the grant of the permission; but this does not require any person to indemnify a council against any claim in respect of injury, damage or loss which is attributable to the negligence of the council.

Should it appear that a permission holder has committed any breach of the terms of that permission, the council may serve a notice on the holder requiring them to take such steps to remedy the breach as are specified in the notice within such time as is so specified. Statutory provision is made for the taking of steps in default and the recovery of expenses incurred in doing so, together with interest running from the date of service of a notice of demand for the payment of those expenses.

The council is not obliged to adopt policy and can deal with applications for permissions on a case-by-case basis on their own merits. However where adopting policy is calculated to facilitate, or is conducive or incidental to the function then the council is empowered to adopt the policy by virtue of section 111 of the Local Government Act 1972.

There is no obligation to do so but if it is decided to engage in consultation then those being consulted must:

1. be provided with the material upon which a decision is likely to be made;
2. be given time to consider it and respond to it;
3. be given the opportunity to make considered representations, with supporting evidence where appropriate;
4. have their views conscientiously taken into account when the decision comes to be made

Pauline Powell, Senior Solicitor, for Head of Legal Services

Risk Assessment

6. The risk of not implementing a policy in this area can be summarised as follows:-
- (a) Local communities will continue to suffer nuisance;
 - (b) Wheelchair users will continue to have their routes impeded in certain parts of the city;
 - (c) There will be the loss of an opportunity to enhance the street scene by controlling the style and design of outside seating areas.

Equalities Impact Assessment

7. The proposed scheme will operate in a way that accords with our responsibilities for disabled people. One of the ways in which this enhanced regime will benefit people that have mobility difficulties is that some business' have restricted frontages which at times can be cluttered with tables and chairs making it particularly difficult for wheelchairs users to pass by. It is not believed that the council's other obligations in this area are engaged by the proposals contained within this report

Resource Implications

Revenue:	Any additional staffing costs arising from the implementation of the scheme will be offset by additional income received through licence fees.
Capital:	N/A
Land:	N/A
Personnel:	At this stage it is difficult to assess whether the implementation of the scheme will have any significant personnel implications which cannot be offset by the income generated.

Appendices

Appendix A – Draft policy

RECOMMENDED:

That:

- (1) The draft policy be approved for consultation purposes;**
- (2) Any consultation responses be reported to a meeting of the Licensing Special Purposes Sub Committee convened to consider the adoption of policy with a view to it taking effect from 1 July 2010**

LOCAL GOVERNMENT(Access to Information) ACT 1985

Background papers

Contact Officer: Nick Carter
Licensing Manager
Neighbourhoods
Telephone 9142511

APPENDIX A

HIGHWAYS ACT 1980

GRANTING OF PERMISSION FOR THE PLACING OF TABLES AND CHAIRS ON THE HIGHWAY

This policy will guide all applications for the placing of tables and chairs on the highway within the Bristol City Council area. The policy will be applied in a flexible way with each application being considered on its own merits.

1. Definitions of terms used in this scheme

Within the terms of this scheme the following definitions apply:

- Authorised Officer:- An officer of the Council authorised by it to act in accordance with the relevant provisions of the Highways Act 1980.
- The Council:- Bristol City Council
- Highway:- Includes:
(a) any road, footway, or other area to which the public have access without payment having the legal status of a highway.
(b) a service area as defined in section 329 of the Highways Act 1980, and also includes any part of a street.
- Permission: - A permission to place tables, chairs and other items on the highway granted by the Council, pursuant to Section 115 (E)(1)(b)(i) of the Highways Act 1980.
- Permission Holder:- The person or company to whom the permission has been granted by the Council.

Permitted Area:- The area in which tables, chairs and other items may be placed as defined in a plan attached to the permission.

Statutory Undertaker:- Any person authorised by any Act or any order or scheme made under or confirmed by any Act, to construct, work or carry on any railway, light railway, tramway, road transport, water transport, canal or inland navigation undertaking, or any dock, harbour pier or lighthouse undertaking, or any undertaking for the supply of hydraulic power, or the Civil Aviation Authority or the Post Office.

2. Submission of the application

An application for permission should be made to the council in writing. An application form is included in this document at Appendix 2.

The following documentation should be submitted with the application

- (a) A completed and signed application form.
- (b) A location plan to a scale of at least 1:1250 scale which clearly defines the premises to which the permission will relate.
- (c) A plan to a scale of at least 1:50 showing the area for which permission is sought outlined in red in relation to the premises and the kerb line. The plan should also show the proposed layout of the tables and chairs.
- (e) A photograph, brochure or other document detailing the furniture and other items to be used including the make, finishes and dimensions.

- (f) A copy or other evidence of the certificate of insurance that covers the permission holder against any claims for third party and public liability risks (in the sum of £5,000,000).

All applications should be marked for the attention of the Licensing Office.

An initial application for permission should be submitted at least 60 days in advance of the intended commencement date of trading.

3. Consultation arrangements

Before any permission is given liaison will take place with the following council teams:-

- Highway Asset Management Team (City Development)
- Area Planning Team (City Development)
- Public Protection Team (Neighbourhoods)

From time to time other bodies may be invited to make comments on applications e.g. the Broadmead Manager.

Following validation of the application the council will publish and affix in a conspicuous place at or near the place that is the subject of the application a notice setting out details of the proposal. The notice shall also state a period (not less than 28 days after the publication of the notice) during which representations regarding the proposal may be made to the council. Copies of the notice will also be served on the owner/occupier of any premises that appear to the council to be likely to be materially affected by the proposal. Representations received after this deadline will only be considered in exceptional circumstances.

Applicants should be aware that they may need to obtain planning permission to reflect the change in use of the highway to café seating. The granting of permission to place tables and chairs on the highway does not confer upon the permission holder any planning

permission. Applicants should make their own arrangements to establish whether planning permission is required by contacting the council's City Development Directorate.

Applications regarding premises where a Premises Licence under the terms of the Licensing Act 2003 is in force should consider whether the outside area should be included as an area licensed for the supply of alcohol. An application to vary the Premises Licence (Licensing Act 2003) may be necessary if the supply of alcohol outside is desired. Alcohol bought within the premises may be consumed outside unless there is a specific prohibition on sales for consumption off the premises. For further guidance contact should be made with the Licensing Office.

4. Determination of the Application

The Licensing Manager or his nominated deputy, acting under delegated powers, will have due regard to the factors listed below in determining any application. Each case will be assessed on its merits with consideration being given to all responses received within the notification period specified in the Notice.

Public Safety

The area for which permission has been sought should not present a substantial risk to the public in terms of road safety, obstruction and fire hazard. The term "public" refers to both customers using the licensed area, and other members of the public using the street. Generally a pedestrian walkway of at least 1.8 metres wide and free of obstructions will need to be provided either adjacent to the premises or adjacent to the highway as indicated on the plan accompanying the application. The width may be higher in areas where there is a greater footfall.

Avoidance of Nuisance

The area for which permission is sought should not present a risk of nuisance from noise, rubbish, potential for the harbourage of vermin, smells or fumes to households and businesses in the vicinity of the proposed area.

Proposed Design

The proposal will be considered in conjunction with the design guide at Appendix 3.

Permitted Trading Hours

The council will normally only allow tables and chairs to be placed upon the highway between 0800 hours and 2200 hours on any one day or such shorter period as the council thinks fit.

5. Approval of Applications

On approving an application the council will issue a permission and notify any conditions attached. A copy of the council's standard conditions, which will generally be attached to permissions, is shown at Appendix 1. Additional/different conditions may be attached if special circumstances apply.

The permission may also contain specific terms such as days and hours when the placing of tables and chairs is permitted.

The conditions attached to the permission must be complied with at all times. Failure to do so could lead to the permission being either revoked, suspended, or not renewed.

6. Issue of Permissions

A permission will be issued for a maximum period of twelve months. All permissions will expire, unless renewed, by the date specified in the permission. If a cheque for a permission fee renewal is dishonoured by a bank this will result in the revocation of the permission unless payment of the outstanding fees is made within 5 working days.

7. Decision to refuse

Where the delegated officer is minded to refuse a request for permission the applicant will be afforded an opportunity make representations to a Licensing Sub Committee within 28 days of being served with a 'minded to refuse notice'.

8. Role of the Licensing Committee

The council has arranged for its Licensing Committee and/or delegated officers to deal with matters relating to the granting of permission to place tables and chairs on the highway. In those cases where a delegated officer considers a hearing should be afforded an application will be referred to Members for determination. This could be heard by the full licensing committee or by an authorised three-member sub committee. The Committee can also consider matters brought by the council with regard to how the permission has been implemented, including whether any permission granted should be withdrawn.

9. Appeal provisions

The Highways Act 1980 makes no provision for a right of appeal in respect of decisions of the council in relation to these permissions

10. General Information on Permissions

Fee Level

Fees will be set to reflect the cost of operating the scheme and will be reviewed on an annual basis.

Reimbursement of Fees

There will be no reimbursement of any fee paid to the council by the permission holder where they cease to trade or otherwise no longer require the benefit of the permission.

Variance of conditions:

The council may at any time vary the conditions of a permission.

11. Enforcement

The council will enforce the provisions of the permission and associated legislation in a fair and consistent manner in accordance with the council's enforcement policy.

12. Complaints against the Service

The Council has a Fair Comment complaints procedure which can be used to raise concerns about the service. Copies of which are available from the Council Offices or on the Council's website www.bristolcity.gov.uk

Standard Conditions

The following standard conditions will generally be attached to a Permission:-

- (1) The Permission Holder shall be permitted to set out tables and chairs (with or without sun umbrellas and/or flower/plant containers) in the area shown edged on a plan attached to the permission. No item can be physically attached to the highway.
- (2) Any table, chair, umbrella or other such item used in connection with a permission shall be kept in good condition and so presented as not to detract from the appearance of the street. Except with the prior written permission of the Council, only those items detailed in the application submitted to the council may be used.
- (3) No items of street furniture authorised under the permission shall be placed over any drainage gully or interfere with the flow of water on the footway.
- (4) The Permission Holder shall not be entitled to undertake any works to the highway. Where the council is satisfied that any damage to the fabric of the highway arises from or is ancillary to the implementation of the permission the Permission Holder shall be liable for the cost of repair and shall reimburse the Council's expenses within fourteen days of being invoiced.
- (5) The tables and chairs (and any other items) may only be in situ between the hours of 0800 and 2200 Sundays to Saturdays inclusive or such other hours as may be notified or as varied from time to time in accordance with conditions set out below.
- (6) Outside the hours mentioned in (c) above, the tables, chairs, umbrellas and other items must be removed and stored away from the Permitted Area and in any event not on the highway.

- (7) The tables and chairs shall be immediately removed upon request by the council or any statutory undertaker if the Permitted Area or any part of it is required for the purpose of effecting improvement, maintenance, repair or other works to the highway
- (8) Tables and chairs shall not be laid out in any way that causes an obstruction of the highway or otherwise impedes reasonable use of it by other persons and in particular by those who are disabled by reason of any visual or mobility impairment
- (9) The Permission Holder shall not cause or permit any nuisance or annoyance (whether to persons using the street or otherwise).
- (10) Barriers or similar items used to define the boundary of the licensed area shall not be used unless they have been approved by the Council
- (11) Where a market is held on or adjacent to a Permitted Area (or part thereof) permission may be withdrawn for the day(s) on which the market is in operation.
- (12) The Permission Holder shall be responsible for keeping the permitted area in a clean and tidy condition at all times.
- (13) The Permission Holder shall indemnify the council against any claim arising from the operation of the permission and shall effect Public Liability Insurance cover in the minimum sum of £5,000,000 (five million pounds).
- (14) Before relying upon the permission the Permission Holder shall comply with all or any other relevant statutory obligations such as obtaining appropriate planning permission or securing an authorisation under the Licensing Act 2003.
- (15) The Permission Holder shall allow access to authorised officers of the council or a constable at all reasonable times.
- (16) The permission granted is personal to the Permission Holder and may not be transferred.

(17) In the event of a breach of any of the terms or conditions upon which the permission is granted the council may suspend or revoke the permission if:

- (i) the Permission Holder fails to remedy the breach following service of a Notice under Section 115K of the Highways Act 1980; or
- (ii) the Permission Holder fails to pay any sums due following the council undertaking works in default of compliance with such a Notice

(18) The council's address for service shall be:

Licensing Office,
Bristol City Council
Princess House,
Princess Street,
Bedminster,
Bristol
BS3 4AG

(19) The Permission Holders address for service shall be that given in the application for permission or as subsequently varied by written notice from the Permission Holder to the council

APPENDIX 2

BRISTOL CITY COUNCIL

HIGHWAYS ACT 1980 - SECTION 115(E)(1)(b)(i)

**APPLICATION FOR GRANT OF A PERMISSION TO PLACE
TABLES AND CHAIRS ON THE HIGHWAY**

- 1. Name of Premises
- 2. Address.....
.....
.....

(Please ensure necessary plans are provided – see copy of permission scheme)

- 3. Type of Premises

Has an authorisation been issued under the Licensing Act 2003? Yes/No (delete as appropriate and see notes*)

- 4. Full name of applicant (Mr/Mrs/Miss/Ms)
- 5. Contact address
.....
.....
.....
- 6. Contact telephone number
- 7. Email address

8. Your nature of interest in the premises frontage e.g. owner, tenant, etc.

.....

9. Please identify all other persons who have an interest in the premises frontage and confirm whether you have obtained their consent

Yes/No//Not applicable (if yes please append confirmation of consent)

9. Have you been granted a permission to place tables and chairs on the highway by the Council previously?

Yes/No (delete as appropriate)

10. If you answered Yes please state the expiry date

.....

11. Date from when the permission is required

.....

12. Days/hours requested
(NB Permission will normally be given only for 0800 to 2200 hours)

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13. Description of tables, chairs, umbrellas, planters and any other items for which permission is sought. Please include photographs, brochure or other documentation providing details of items (see copy of design guide attached)

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.....

14. Please provide details of where any tables and chairs will be stored when not in use.

.....
.....
.....
.....

I have read the permission scheme and I undertake, in the event of a permission being granted, to observe the terms and conditions of the permission at all times.

This application should be accompanied by evidence that the Permission Holder is indemnified against any claim arising from the operation of the permission by Public Liability Insurance cover in the sum of £5,000,000. The evidence should state that the Permission Holder shall indemnify and keep indemnified Bristol City Council from and against all loss and damage, action, proceedings, suits, claims demands, costs and damages and expenses in respect of injury to or the death of any person, damage to any property moveable or immovable or otherwise by reason of or arising in any way directly or indirectly out of any permission granted

Signature(s) of Applicant

Date.....

This form together with any accompanying documentation should be submitted to the:-

Licensing Office
Bristol City Council
Princess House
Princess Street
Bedminster
Bristol BS3 4AG
Telephone: 0117 9142500
Fax: 0117 9142515
Email: licensing@bristol.city.gov.uk

NOTE FOR APPLICANTS

Alcohol Licensed Premises

Applications regarding premises where a Premises Licence under the terms of the Licensing Act 2003 is in force should consider whether the outside area should be included as an area licensed for the supply of alcohol. An application to vary the Premises Licence may be necessary if the supply of alcohol outside is desired. Alcohol bought within the premises may be consumed outside unless there is a specific prohibition on sales for consumption off the premises. For further guidance contact should be made with the Licensing Office. Applicants should also make their own arrangements to ensure that any necessary planning permission is obtained.

APPENDIX 3

TABLES AND CHAIRS ON THE PAVEMENT

DESIGN GUIDE

1. Introduction

- 1.1 This guide is intended to ensure that outdoor areas for tables and chairs can be established in Bristol's streets and precincts without conflicting with the needs of other street users. The guide also seeks to create a high quality of design to enhance the street scene.
- 1.2 It will not normally be necessary to obtain planning consent however it may be necessary to obtain permission under the Licensing Act 2003 if alcohol is being supplied in the outside area.

2. Size and Layout

- 2.1 This will be dependent on factors such as available space, type of premises and existing street furniture. Needs of other highway users should be taken into account, e.g. pedestrian flows, vehicular access etc. It should be noted that the following key principles will apply in every case.
- 2.2 A clear pedestrian route shall be maintained for those walking past the premises. This should preferably be adjacent to the kerb to ensure that most pedestrians and particularly those with visual impairments can maintain their regular route. There should normally be a minimum width of 1.8 metres. Emergency exits from adjacent buildings must not be obstructed by the seating area.

- 2.3 The layout of the tables, seats, access points and enclosure will have to be approved by the council. It is essential that the layout of the area does not provide any obstruction or inconvenience to people with disabilities. Adequate space between tables for wheelchair access will also be required.
- 2.4 The approved area may be permanently marked out by the council by steel pins or markers set into the pavement. It is important that no obstructions such as tables, chairs or barriers be left on the pavement outside the approved hours.

3. Means of Enclosure

- 3.1 When an area is in use a temporary form of enclosure will normally be required with adequate openings to permit access. The function of this enclosure is to demarcate and contain the area but also to give a clear warning particularly to people with visual impairments.
- 3.2 For this reason it is important that the barrier has some solid elements particularly just above ground level to be detectable by a walking assistance aid. Any enclosure side paneling should be approximately 800mm high and in a contrasting colour to the background.
- 3.3 It is essential that any means of enclosure is lightweight in construction so that it can be easily dismantled and stored in the premises outside the approved hours.
- 3.4 The colour and materials of the enclosure should be carefully considered to ensure that from a distance it is not too visually dominant.
- 3.5 In some circumstances a particular design may be insisted upon to retain some continuity of design in a particular space or square for instance.

4. Furniture

- 4.1 A standard design of seating and tables will not be insisted upon but a reasonable quality will be requested. A mixture of furniture is not likely to be approved. The materials and colours should not be too bright, garish or overly reflective. White plastic furniture will not normally be approved. Tables should be of a design to allow ease of use for a wheelchair user.
- 4.2 Any umbrellas used in a scheme should be specified as part of the design and details provided of their location, material and colour. Umbrellas must be positioned so they cannot overhang beyond the enclosure (including when adjusted) as this could create a danger to a passing pedestrian. A particular type may be insisted upon to retain some continuity of design in the street scene.
- 4.3 Advertising should only relate to items on sale within the premises. Any other advertising may require specific planning consent.

5 Environmental Issues

- 5.1 Details should be provided of management arrangements to ensure that the approved area is kept clean and litter free. Any such arrangements will also need to cover litter straying outside of the licensed area.