



## Committee report

Committee	<b>LICENSING COMMITTEE</b>
Date	<b>16 FEBRUARY 2015</b>
Title	<b>PERMISSIONS FOR THE PLACING OF TABLES, CHAIRS, A-BOARDS AND OTHER OBJECTS ON THE HIGHWAY POLICY</b>
Report of	<b>HEAD OF PLANNING AND REGULATORY SERVICES</b>

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### EXECUTIVE SUMMARY

1. This report summarises a Permissions for the Placing of Tables, Chairs, A-Boards and Other Objects on the Highway Policy with a view to recommending its adoption to the Executive.
2. The proposed new policy (Appendix 1) sets out how applications should be made and permission granted to a person wishing to place and use objects or structures on, in or over a highway under Section 115E of the Highways Act 1980.
3. The new policy seeks to regulate the placement of such items on the highway. The council supports the need for all businesses to enhance business opportunities; however, the placement of such items has to be done in a controlled and safe manner. The new policy provides limitations for some objects and provides clear processes which must be followed.
4. It also advises the Licensing Committee of the proposed fees and seeks the committee to recommend approval of the proposed fee structure to the Executive.

### BACKGROUND

5. There is currently no policy controlling the placing of items on the highway and in some parts of the Island the placement of unauthorised items such as A-boards, tables and chairs and other street furniture has become dangerous to both the road user and pedestrians.
6. There will be an application fee to cover the costs of the consultation, issuing of the permission and the monitoring of the permission to ensure compliance. In addition, if the land is owned by the council, a land hire charge will also be levied.

### STRATEGIC CONTEXT

7. The implementation of a Permissions for the Placing of Tables, Chairs, A-Boards and Other Objects on the Highway Policy outlined in this report would align with the Isle of

Wight Council's Vision and Priority Statement, 2014-17. Specifically, the proposals align with the priority of 'Growing the economy and tourism'.

## CONSULTATION

8. A consultation was carried out on the draft policy. The consultation started on the 15 December 2014 and an advert appeared in the 18 December 2014 publication of the Isle of Wight County Press. The consultation was placed on the Licensing Section's website. The consultation finished on 16 January 2015.
9. All premises, where officers were aware that businesses had placed items on the highway were contacted along with the chamber of commerce, all elected members, all town and parish councils and all other agencies identified in section 7.4 of the draft policy
10. In total, 37 replies were received. Of these, ten were from a parish or town council, 14 were from businesses and six were from residents. Comments were also received from the Guide Dogs for the Blind, Ryde and Newport Business Associations, two other Isle of Wight Council departments, Island Roads and one unknown who officers could not identify as either a business or resident.
11. Seven representations opposed the policy and two supported its implementation without making any further comments.
12. A late representation has been received from Newport Parish Council. Officers have not had the opportunity to fully evaluate the contents of this representation due to the time scales of ensuring this report is available for publication. Officers will provide an evaluation including any amendments to the policy as a result of it at the meeting.
13. The remaining representations, although not stating they were against it, expressed some concerns about its implementation or made suggested changes to the draft policy.
14. The main concerns were regarding the cost of this process, in particular the placing of A-boards, may be too expensive. As a result the businesses may not be able to afford to obtain the permission which could in turn lead to a reduction in their business.
15. Some comments have been received challenging the need for A-boards to be regulated and that the proposed policy is being used as an additional way for the council gaining income.
16. The respondents indicated that they were not aware that their A-boards had caused any concerns. In addition they believed that evidential proof should be provided to support the implementation of this policy.
17. Arreton Parish Council and Shoezone indicated in their representations that there was no need for the policy as there was already legislation to control objects being placed on the highway.
18. Island Roads provided some comments/suggested amendments to the wording and contents of the policy. In addition they have raised a number of contractual issues.
19. One representation thought that the maximum height of an A-board of one metre was too short.

20. Another stated that businesses near to or with narrow pavements or no pavements would be disadvantaged due to the minimum distances stipulated within the policy.
21. A full list of responses is attached as Appendix 2.

#### FINANCIAL / BUDGET IMPLICATIONS

22. Council expenditure on licensing related matters is balanced from income generated from fees. The fees are set by the council and represent the full costs of administering and the enforcement of matters relating to highway permissions.
23. Some of the activities which may be transferred to the Licensing Department are currently being undertaken by Island Roads as a part of the PFI contract. As a result, there may be budget implications to either organisation. Ongoing discussions are being held between the council's PFI management Team and Island Roads due to the complex nature of the contract to understand if there are any financial implications. Officers will provide a further update at the meeting.
24. The fee charged to grant permission can only include reasonable expenses incurred by the council in granting permission.

#### LEGAL IMPLICATIONS

25. The council may grant a person permission to use objects or structures on, in or over a highway for a purpose which will result in the production of income; for the purpose of providing a centre for advice or information; or for the purpose of advertising. There is no requirement to have a policy in place, but it is considered beneficial to provide consistency with this discretionary ability to grant a licence.
26. The highway authority in granting the permission may attach such conditions as it sees fit so long as they are reasonable.
27. The Highways Act 1980 provides a power for the authority to recover such fees as are reasonable to reimburse the council their reasonable expenses in connection with the grant of the permission. There is no power to charge if the permission is not subsequently granted. If the land on which the permission is to be granted is also owned by the council then we may also grant a separate licence and charge a land hire fee.
28. Section 115F(4) of the act allows the council to require an indemnity against any claim in respect of injury, damage or loss arising out of the grant of the permission and thus reducing the possible liability of the council.

#### EQUALITY AND DIVERSITY

29. The council, as a public body, is subject to general and specific duties under equality and diversity legislation and as such has a duty to impact assess its service, policies/strategies and decisions with regards to diversity legislation and the nine protected characteristics (race, gender reassignment, disability, age, sex and sexual orientation, religion or belief, pregnancy and maternity, marriage and civil partnership). There are no direct implications for the council's duties under the terms of Equality Act 2010 arising from the recommendations in this paper.

30. The equality impact assessment for this policy demonstrates that there is a positive and negative impact on age and disability protected characteristics.

### 31. OPTIONS

Option 1: To recommend that the Executive adopts the draft Permissions for the Placing of Tables, Chairs, A-Boards and Other Objects on the Highway Policy, attached as Appendix 1.

Option 2: To recommend that the Executive approves the fee as detailed in paragraph 34 of this report.

Option 3: To amend the draft Permissions for the Placing of Tables, Chairs, A-Boards and Other Objects on the Highway Policy, attached as Appendix 1 and recommend that the Executive adopts the revised Highways Amenity Permission Policy.

Option 4: To amend the fee as detailed in paragraph 34 of this report and recommend that the Executive approves the revised fee.

### RISK MANAGEMENT

32. The policy sets out how the Isle of Wight Council will regulate Permissions for the Placing of Tables, Chairs, A-Boards and Other Objects on the Highway Policy, including application, determination, renewal, enforcement and appeals. The policy also offers guidance and information for both the applicant and decision makers on the areas of consideration to promote a consistent approach.

33. Officers are satisfied that the policy is fit for purpose and therefore presents no risk if it is approved.

### EVALUATION

34. Officers are proposing that the application fee is £225. The land hire charge is still to be determined.

35. Many of the concerns relate to the fees and how these will have a financial burden on the businesses. Officers believe the application fees proposed above, adequately cover the costs of the licencing department carrying out the consultation process and thereafter ensuing compliance.

36. Some of the comments suggest the process to obtain the licence could be too bureaucratic and too long to complete. The legislation is prescriptive and requires a 28 days consultation. The council has no power to alter this. The policy does allow for the permission to be issued immediately at the end of the consultation period if there are no outstanding issues. It is envisaged that the majority of permission will be granted at this time.

37. With regards to the issues relating to:

- the need for the policy,
  - the charging a fee and
  - there already being legislation in place to control objects on the highway;
- the legal section at paragraph 25 of this report clarifies this position.

38. Officers do not have any local accident statistics to support the implementation; however, there have been a number of alleged incidents but none have been substantiated.
39. The maximum height of an A-board has been increased to 1.5 metres. The size of the A-board would still need to be taken into account when considering the application to ensure it doesn't present a risk to pedestrians or block the view of road users.
40. The distances detailed within the policy have been provided by Island Roads. These are the minimum distances which are needed to ensure that pedestrians, wheelchair users and people with prams/pushchairs etc. can safely move along pavements. Maintaining the safety of all pedestrians is the fundamental purpose of this policy.
41. Discussions are continuing with Island Roads regarding the contractual issues. These are not about the implication of the policy; they are to do with contractual matters where Island Roads are currently required to do some of the work along with the distribution of any fees and charges received. Officers are hoping to provide a verbal update at the committee meeting regarding to the issues they have raised.
42. Additional paragraphs (11.4 to 11.6) have been added to the policy to detail how objects which do not have permission will be regulated.
43. In some circumstances objects are placed on the highway offering articles for articles for sale, but do not require street trading consent. These objects will still be required to obtain permission under this policy. Objects used for the sale of items requiring street trading will gain permission through that licensing process to ensure that businesses do not have to submit two applications and pay two lots of fees.
44. The policy does not require permission to be obtained for litter bins, advertising banners, skips, scaffolding, hoardings or other structures, building materials or cranes. However these items may still need permission but under different policies or legislation.
45. All existing objects currently positioned on the highway will required to undergo the application process to either gain permission or to renewal any permission currently in place. The exact times scales and the process of how businesses need to do so have not yet been decided, however, officers will liaise with the business to ensure that suitable and sufficient time will be given to ensure compliance is obtained. It should be noted that some applications for existing objects may be refused.
46. To ensure that officers can provide advice and assistance to local businesses officers will be recommending that the new policy is implemented from 1 August 2015.
47. Officers believe that the policy and the proposed fees are proportionate to the risk the positioning of objects on the highways presents and it is compliant with the legislative requirements.

48. RECOMMENDATION

Option 1: To recommend that the Executive adopts the draft Permissions for the Placing of Tables, Chairs, A-Boards and Other Objects on the Highway Policy.

Option 2: To recommend that the Executive approves the fee as detailed in paragraph 34 of this report.

APPENDICES ATTACHED

[Appendix 1](#) Draft Permissions for the Placing of Tables, Chairs, A-Boards and Other Objects on the Highway Policy

[Appendix 2](#) Responses received during consultation

BACKGROUND PAPERS

[Equality Impact Assessment](#)

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