



# Committee report

Committee	<b>LICENSING SUB COMMITTEE</b>
Date	<b>8 OCTOBER 2018</b>
Title	<b>TO DETERMINE AN APPLICATION FOR A HIGHWAY AMENITY PERMISSION UNDER SECTION 115A OF THE HIGHWAYS ACT 1980 FOR THE COAST BAR AND DINING ROOM, 14-15 SHOOTERS HILL, COWES, ISLE OF WIGHT, PO31 7BG</b>
Report Author	<b>INTERIM DIRECTOR OF NEIGHBOURHOODS</b>

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## BACKGROUND

1. The purpose of this report is for the Committee to consider objections received in respect of the provision of street furniture outside of The Coast Bar and Dining Room, 14-15 Shooters Hill, Cowes, Isle of Wight, PO31 7BG.
2. Specifically this application relates to the barriers that currently surround the tables and chairs outside of the premises.
3. Section 115E of the Highways Act 1980 provides the powers 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;
4. A Street Furniture Permit (also known as a Highway Amenity Permission) applies to the following areas defined under Part VII 115A of the Highways Act 1980:
  - 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

5. 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.
6. A Street Furniture Permit is not required if the objects or structures are being placed on privately owned land which is not a part of a highway as defined by Part VIIA section 115A of the Highways Act 1980.
7. An object includes:
  - a) tables,
  - b) chairs,
  - c) benches;
  - d) parasols;
  - e) patio heaters; and
  - f) any other object which may cause an obstruction on the highway including any object used to offer articles for sale.
8. Any person may make representations in respect of the application and if these are not resolved the licensing authority will hold a hearing to determine the application.
9. When considering an application representations can be accepted regarding any issue but particular consideration is given to the following factors:
  - a) Public safety
  - b) The prevention of nuisance
  - c) The prevention of crime and disorder
  - d) Visual impact
10. An application for a Street Furniture Permit was originally submitted to the licensing authority on 2 July 2018 for tables, chairs and barriers to be placed outside of The Coast Bar & Dining Room, 14-15 Shooters, Hill, Cowes, Isle of Wight, PO31 7BG. (Appendix A).
11. The Council is required to 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 Street Furniture Permit application to the Licensing Authority. This was carried out by Island Roads within the appropriate timescale.
12. The consultation commenced on 2 July 2018 and was due to end on 6 August 2018.
13. On the day the application was accepted the IOW Fire and Rescue Service objected to the application on the grounds of public safety. They also commented that some information appeared to have been missed out and that the photograph and the plan that had been submitted with the application were not accurate and no longer reflected the furniture being used.
14. A request was made for the applicant to update the Licensing Department.

15. The applicant responded on 27 July 2018, stating that the business was in the process of replacing the barriers and that this was the reason why the application hadn't been amended previously.
16. The applicant stated that she would forward new photographs to the Licensing Department. These were received on 3 August 2018. The new barriers are a number of large containers on wheels that have no resemblance to the barriers that were previously in place. (Appendix B)
17. Cowes Town Council had already considered the application and agreed to make no comment. However, on 2 August 2018 the Licensing Department received an email from them raising concerns that they had consulted on an application that in reality was very different to that which they had discussed. (Appendix C)
18. After discussions with the Regulatory Services Manager it was agreed that due to health and safety concerns and with Cowes Week imminent that the business should be asked to remove the barriers.
19. It was also considered necessary to restart the consultation period in order to give all parties the opportunity to comment on an accurate application. This information was conveyed in an email dated 3 August 2018.
20. A visit was made to the premises by a Licensing Officer on 9 August 2018 to discuss the removal of the barriers due to health and safety concerns, and specifically the fact that the barriers are set on wheels and could pose a temptation to revellers.
21. After discussions with the applicant and the reviewing of risk assessments the officer was satisfied that there was little risk to the public as to their mobility and it was agreed that the barriers could remain for the duration of the consultation period.
22. A new consultation period commenced on 8 August 2018 and ended on 12 September 2018.

### CONSULTATION

23. The Highways Act 1980 prescribes a twenty eight day consultation period, commencing the day after the publication of the notice.
24. The outcome of the consultation in respect of this application is as follows:

<u>Organisation</u>	
Local Elected Member	No Representation made
Parish/Town Council	Representation made
Fire and Rescue Service	No Representation made – having reviewed an accurate application no concerns have been raised.
Police	No Representation made

Planning Services	No Representation made
Environmental Health	No Representation made
Licensing Authority	No Representation made
IWC PFI Contracts Team	No Representation made
Island Roads	No Representation made
Parking Services	No Representation made
Isle of Wight Amenity Land Hire/Parks and Esplanades	No Representation made

25. Cowes Town Council has objected to this application on the grounds of public safety. They state that “the placing of tables, chairs and barriers outside of their premises from 08:15 hours will force pedestrians onto the public highway which vehicles are permitted to use before 10:00 hours.” (Appendix D)

26. Other Persons

The Council will consider any representations received from other parties. In this instance no other representations were received.

FINANCIAL/BUDGET IMPLICATIONS

27. Broadly, Council expenditure on licensing matters, and specifically those administered and enforced through Planning and Regulatory Services, balances income generated from fees.

LEGAL IMPLICATIONS

28. The 28 day consultation period ended on 12 September 2018. The Isle of Wight Council’s Permissions for the Placing of Tables, Chairs and Other Objects on the Highway Policy states; that if valid representations are received during the consultation period and cannot be resolved by an officer, the application will be determined by the Licensing Sub-Committee at a hearing.

Implications under the Crime and Disorder Act 1998

29. Members are advised that without prejudice to any other obligation imposed on it, it shall be the duty of each authority to which this section applies to exercise its functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area.

Human Rights

30. Members are advised that this application must be considered against the background of the implications of the Human Rights Act 1998.

31. There are two convention rights, which need to be considered in this context:

Article 6 - Right to a Fair Trial

In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

There is no right of appeal from any decision of the Licensing Authority.

#### Article 1 - First Protocol Protection of Property

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. In the case of Article 1 of the first protocol it states that “no one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and the general principles of international law. The preceding provisions (of which articles 6 and 8 are but two) shall not however in any way impair the right of the state to enforce such laws as it deems necessary to control the use of the property in accordance with general interest or to secure the payment of taxes or other contributions or penalties”.

32. It is considered that the following paragraphs from the Isle of Wight Council's Permissions for the Placing of Tables, Chairs and Other Objects on the Highway Policy. Members' attention in respect of this application is drawn to:

Paragraph 1	Introduction	All
Paragraph 2	Legislation	All
Paragraph 3	Definitions	3.6 – 3.9
Paragraph 4	Consideration When Determining an Application	All
Paragraph 5	Application Process	5.1
Paragraph 6	Fees and Charges	N/A
Paragraph 7	Consultation	All
Paragraph 8	Determination	All
Paragraph 9	Conditions	All
Paragraph 10	Appeals	N/A
Paragraph 11	Enforcement & Revocation	N/A
Paragraph 12	Surrender	N/A

#### EQUALITY AND DIVERSITY

33. 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 go beyond prohibition and publish and promote service improvements by engaging with the local community to assess the impact of any decision on the local community. As a requirement under the Equality Act 2010 and further improvements to diversity legislation all local authorities are required to impact assess their services, policies/strategies and decisions with regard to diversity legislation – race, disability, gender, age, sexual orientation and religion/belief. (NB: this list is not

exhaustive, it does cover current legislation but future development could also include poverty and social inclusion as an example).

34. The equality impact assessment looks at how a service promotes equality and diversity to ensure legal compliance and that the services we provide and the decisions that we make meet the needs of our local community.
35. There is no requirement for an equality impact assessment to be carried out.

### OPTIONS

- Option 1: Grant the Street Furniture Permit as per the application.
- Option 2: Grant the Street Furniture Permit as per the application with any additional conditions/modifications that the Sub-Committee deem reasonable and proportionate.
- Option 3: Refuse Permission

### RISK MANAGEMENT

36. With regard to Option 1: To grant the permission as per the application may not adequately mitigate the concerns raised by the objector/s. Consideration should be given by the Sub-Committee as to whether the concerns raised are likely outcomes.
37. With regard to Option 2: If the Sub-Committee are minded to grant a permit, the concerns raised by the objectors could be addressed by attaching conditions or modifying the permit. Any condition added or modification made must be appropriate and proportionate.
38. With regard to Option 3: If the Sub-Committee decides to refuse all or part of the application, there is no right of appeal against the decision.

### EVALUATION

39. The applicant has considered the objection and has responded by stating that street furniture has been positioned outside of the premises before 10:00 hours for the past four years without issue.
40. Whilst they accept that the new barriers are very different to the previous ones used, it is their view that the new barriers pose less of a hazard as they do not give the impression to pedestrians that it is possible for people to squeeze past them.
41. The applicant also states that in their view having the barriers out before 10:00 hours poses no greater risk to the public than when Sainsbury's receive their deliveries and their cages block sections of the pedestrian zone.
42. In relation to the question posed in respect of amending the application to a start time of 10am, the applicant states "The reason I cannot amend the application to 10am is due to health and safety reasons. The barriers are stored in our restaurant when not outside. The movement of these barriers needs to be completed before we are open to the public for the safety of our staff and

customers. Also with monitoring the high street between 8am and 10am, 8am to 8.30am is the quietest period in which to manoeuvre the barriers and furniture without posing a higher risk to our staff and the public.”

43. Cowes Town Council considered the applicant’s response and discussed the matter further. However their original objection stands.
44. Cowes High Street is now a pedestrian zone between the hours of 10:00am and midnight and from midnight until 7am. Cowes Town Council’s concerns around public safety therefore relate to the hours between 08:15 and 10:00am.
45. It is a condition on all Street Furniture Permissions that street furniture is removed from the highway outside of the permitted hours.
46. In making its decision under section 115E, the Committee should have regard to the Isle of Wight Council’s Permissions for the Placing of Tables, Chairs and Other Objects on the Highway Policy.
47. The Committee must have regard to all the representations made and the evidence it hears.
48. The Highways Act 1980 does not allow any appeals against the decision of the Council in relation to a refusal to grant a Street Furniture Permit.

#### RECOMMENDATION

49. Members should determine the application in accordance with the Isle of Wight Council’s Permissions for the Placing of Tables, Chairs and Other Objects on the Highway Policy.
50. It is the view of the Licensing Department that on the grounds of public safety this application should be refused based upon the inability of the applicant to comply with the pedestrian zone commencement of 10:00 hours.

#### APPENDICES ATTACHED

[Appendix A](#) - Application for a Street Furniture Permit

[Appendix B](#) - Photographs of proposed street furniture

[Appendix C](#) - Email from Cowes Town Council dated 2 August 2018

[Appendix D](#) - Emails from Cowes Town Council dated 6 September 2018 and response by applicant to objections that were raised

#### BACKGROUND PAPERS

- Isle of Wight Council Permissions for the Placing of Tables, Chairs and Other Objects on the Highway Policy 2015 - 2020.  
<https://www.iow.gov.uk/azservices/documents/1485-IWC-Highways-Permissions-Policy.pdf>

- Isle of Wight Council (Various Streets, Cowes, Isle of Wight) (Prohibition of Driving) Order No 1 2017

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