
Meeting: Traffic Management Committee
Date: 1 March 2011
Subject: Tables and Chairs and Portable Advertising Boards on the Highway
Report of: Basil Jackson, Assistant Director of Highways and Transport
Summary: The report provides the Traffic Management Committee with details relating to the proposed policy for licensing the use of tables and chairs and portable advertising boards on the Highway. The policy is designed to cater for the rise in Street Café culture and on-street advertising and to protect pedestrians who might come into contact with these structures.

Contact Officer: David Bowie, Head of Service, Traffic Management
Public/Exempt: Public
Wards Affected: All
Function of: Highways and Transport

CORPORATE IMPLICATIONS

Council Priorities:

The Council priorities affected by this paper are:

- creating safer communities, and
- managing growth effectively.

Financial:

Currently there are no controls over the placing of tables and chairs or portable advertising boards on the Public Highway. These are becoming more popular with the rise of a street café culture and as a cheap form of advertising for businesses. The proposed policy introduces a licensing process for which there would be a fee to assess each application as well as an annual charge for the granting of the licence. The annual licence fee will allow that piece of work to be done at no cost to the Council, as the proposed fee will cover officer time to establish a decision on that application. The consultation fee will cover the cost of the consultation exercise. The cost of an annual licence would differ depending upon the number of tables and chairs and / or advertising boards. This extra income would be fed back into the Highways and Transport function.

Legal:

In April 2009, Central Bedfordshire Council (CBC) succeeded Bedfordshire County Council (BCC) as highway and traffic authority for the road network in Central Bedfordshire. To ensure the safety of all Highway users, on-street amenities such as tables and chairs and advertising boards comply with the Road Traffic Act 1991.

Risk Management:

There is a possibility that by imposing a fee on both existing and new traders there could be a negative reaction from business owners, especially those who have not paid in the past. In mitigation the businesses who currently use Highway land to trade have added to their customer base and potential profit without paying any extra rates to do so. For new businesses it will enable them to decide on how they wish to grow their business and how much they can afford.

Staffing (including Trades Unions):

None as a result of this report.

Equalities/Human Rights:

The proposed charges are designed to ensure equity for businesses of differing sizes by allowing smaller businesses with fewer customers the opportunity to grow their business by allowing up to two sets of tables and chairs for no fee. Officers consider that proposals in this paper, being less than those charged by our neighbouring authorities, are viable and unlikely to cause significant problems to local communities.

Community Development/Safety:

The Road Traffic Act was introduced to protect all users of the Highway network. The Act places a duty on local traffic authorities to ensure the expeditious movement of both motorists and pedestrians. It is with this in mind that a formal policy needs to be adopted to ensure the free and safe movement of all non-motorised users who may come into contact with a street café or an advertising board. In addition to the safety aspects, managing street cafés and advertising boards assists with building a better community that residents can be a part of and helps to grow the respective town or village.

Sustainability:

The effective management of Central Bedfordshire's footway and street network is a key part of accommodating Central Bedfordshire's growth agenda and ensuring that the district is "open for business".

RECOMMENDATION:

To approve the proposed policy for the licensing of tables and chairs and portable advertising boards on the highway thus enabling the Council to control how the footway and street network is utilised as well as generating income for the authority.

Background

Policy context

- 1 The policy has been written to establish a level of control over something which has started to increase in Central Bedfordshire's Market Towns at the discretion of the business owners and not of the Authority.
- 2 A key element of controlling the use of the highway is to establish a clear policy for restaurants and cafes to follow and also to ensure pedestrian safety regarding tables and chairs and portable advertising boards.

Effective control:

- (a) provides a safe and free-flowing footway/street environment by discouraging injudicious use of tables and chairs and advertising boards, and
- (b) supports economic regeneration and local businesses by providing safe, convenient and competitively priced licences for areas they can use to serve the community.

Current Policy Structure

3. Currently Central Bedfordshire Council has no adopted Policy which covers the placing of tables and chairs and portable advertising boards on the highway, leading to an uncontrolled proliferation with no regard for the safety of pedestrians and other non-motorised users.

Financial

4. The proposed licence fees are set to be compatible with our neighbouring authorities. The annual licence fee will allow each application to be properly assessed at no cost to the Council, as the proposed fee will cover officer time to establish a decision on that application. The consultation fee will cover the cost of the consultation exercise. Currently, from an assessment of known locations where there are already tables and chairs and advertising boards which would be subject to a licence, the Council would generate approximately £6500 income per annum from licence fees.

Appendices:

Appendix A – Policy Document

POLICY FOR THE GRANT OF A LICENCE FOR THE ERECTION AND USE OF A
FACILITY (Tables and Chairs) (Portable Advertising Board)
UNDER SECTION 115 (E-K) OF THE HIGHWAYS ACT 1980

HIGHWAYS ACT 1980

General Information

Central Bedfordshire Council recognises the importance of ensuring that the licensing of tables and chairs and portable advertising boards on the highway is carefully controlled.

It is particularly important because pedestrians in general can be put at risk if adequate measures are not considered at application or certain conditions are not put in place. Additionally, people with impaired vision, mobility difficulties or pushing prams can be seriously disadvantaged by badly placed tables and chairs or portable advertising boards.

Central Bedfordshire Council as the Local Authority has legal powers to grant permission, require payment, set conditions with each application, decline an application and enforce as necessary.

Legislative Background

Section 115E of the Highways Act 1980 gives the Local Authority the power to grant permission to a person to erect and use a facility (tables and chairs or portable advertising boards) on a walkway.

Section 115F of the Highways Act 1980 gives the Local Authority the power to require the payment of such reasonable charges for the grant of a permission issued under section 115E of the 1980 Act.

Section 115F of the Highways Act 1980 additionally gives the Local Authority the power to impose such conditions as may be necessary.

Section 115G details the consultation process that that is required to be undertaken in respect of an application for the grant of a licence under section 115E of the 1980 Act.

Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 gives Councils the power (but no duty) to designate specific areas within their administrative boundaries as:

- a Prohibited street - a street in which street trading is prohibited.
- a Licence street - a street in which street trading is prohibited without a licence granted by the council.
- a Consent street - a street in which street trading is prohibited without the consent of the council.

'Street trading' is defined as 'selling, exposing or offering for sale any article (including a living thing) in a street'.

The term 'street' includes 'any road, footway, beach or other area to which the public have access without payment'. Any person street trading without a valid Consent commits a criminal offence.

Central Bedfordshire Council has designated all streets within its authority as Consent Streets, with the exception of a few streets which will be Prohibited streets on safety grounds. A list of these is available on request.

The fact that a trader has a licence to have tables and chairs or portable advertising boards outside their business or lease to occupy the land, or has some other form of consent, for example a planning consent or a licence under the Licensing Act 2003, will not override the requirement to obtain a Consent where the trading amounts to street trading.

It will also not remove the obligation on the owner to comply with any other legal requirements, for example holding a current food hygiene certificate, nor override the duty to comply with the general law concerning, for example, trespass (the landowner's permission to occupy the land must be obtained), highways, planning, licensing, health and safety, nuisance, waste disposal requirements, etc.

Exemptions

The following are exempt for the purposes of this policy:

A) Placing of tables and chairs or portable advertising boards in a market or fair, the right to hold which was acquired by virtue of a grant (including a presumed grant) or acquired or established by virtue of an enactment or order.

B) Placing of tables and chairs or portable advertising boards in a Trunk Road picnic area provided by the Secretary of State under section 112 of the Highways Act 1980.

C) The use for trading under Part VIIA of the Highways Act 1980 of an object or structure placed on, in or over a highway.

D) The operation of facilities for recreation or refreshment under Part VIIA of the Highways Act 1980.

E) The doing of anything authorised by regulations made under section 5 of the Police, factories, etc. (Miscellaneous Provisions) Act 1916.

Size and Layout

All applications for the granting of a licence for tables and chairs or portable advertising boards should relate to an existing cafe, public house, catering establishment or mobile food vendor.

The layout of the tables, chairs, access points and means of enclosure needs to be defined and should not normally extend beyond the frontage of its own premises. Waist high posts and ropes and / or solid elements near to ground level, which are detectable by a stick, are suggested as one method to give a clear warning to all of the presence of the chairs and tables or portable advertising boards.

It is important that the layout of these areas does not provide any obstruction or inconvenience to customers with disabilities and, particularly, that space is left between tables and chairs for wheelchair access. This should ideally be 2 metres, with a minimum of 1.8 metres.

Emergency exits from the premises or adjacent buildings must not be obstructed by the placing of the tables and chairs or portable advertising boards.

If toilet facilities do not meet the requirements necessary for wheelchair access, then this must be made clear and a sign displayed so people are made fully aware.

Any licence granted will include a plan showing the agreed dimensions and layout of the table and chairs and must be available at the premises for inspection on request.

Furniture

Reasonable quality seating and tables are expected. A mixture of furniture is not recommended and would normally be rejected if proposed as uniformity is essential in maintaining a pleasant streetscape.

The materials and colours used should not be too bright, garish or overly reflective. Tables should be of a design to permit wheelchair use, both for dining and navigation and this should also be considered for buggies and prams.

The use of parasols, if proposed, should be considered as part of the overall design along with their locations, material and colour.

In areas that are particularly plagued with birds then the use of umbrellas or another form of cover may be essential for the licence to be granted.

All parasols or any other forms of covering should be positioned so they will not overhang the agreed boundary as this could cause danger to passing pedestrians.

Consultation

As part of an application for the grant of a licence for tables and chairs or portable advertising boards, officers from Central Bedfordshire Council will undertake the following consultation:

- a public notice placed in local newspaper;
- a notice prominently displayed in vicinity of premises or site;
- consultation letters sent to occupiers/users of premises that might be materially affected by the granting of the licence;
- Central Bedfordshire Council – Highways department;
- Central Bedfordshire Council - Planning department;
- Central Bedfordshire Council - Food safety team (in respect of food hygiene matters where applicable), and
- Bedfordshire emergency services (police, ambulance and Fire & Rescue Service).

A period of 21 days will be allowed for those consulted to respond and for any comments to be taken into consideration before deciding the application.

No formal public consultation will be required for Portable Advertising Board although advice with the Accessibility Officer will be sought and taken into consideration along with other internal interested parties before making the final decision.

APPLYING FOR A LICENCE

Any person wishing to apply for a licence to place tables and chairs or portable advertising boards on the highway must submit a completed application form to:

Central Bedfordshire Council
Technology House,
239 Ampthill Road,
Bedford
MK42 9BD

Each completed application must be accompanied by:

- the fee;
- a copy of a map, of at least 1:200 scale, clearly identifying in red the proposed site boundary, and
- confirmation that adequate levels of third party and public liability insurance (minimum £5 million) are, or will be, in place during the licence period.

On receipt of the completed application form, an acknowledgement will be sent to the applicant.

An officer may visit the applicant and inspect the premises where the applicant intends to place the tables and chairs or portable advertising boards.

LICENCE FEES

New Licence

The fee for the granting of a **new** licence is made up of two parts:

Part A – A standard annual fee based on the number of tables and chairs or portable advertising boards which the licence is to cover, which represents the reasonable annual charge required for the administration and enforcement of the licence.

- up to 2 sets of tables and chairs (maximum 4 chairs per table) - **Free Of Charge**
- over 2 and up to 10 sets of tables and chairs - **£500**
- over 10 sets of tables and chairs - **£1000**

- **£100** for each portable advertising board

Part B – A supplementary charge to cover the reasonable costs of the consultation process that has to be undertaken in respect of a new application.

- **£150** per application (tables and chairs).
- **£50** per application (portable advertising boards).

Renewal of a licence

There is a standard renewal fee based on the number of tables and chairs and portable advertising boards covered by the licence. All renewal charges are the same as in **Part A** above.

Variation of a licence

Where a variation of a licence is sought there are two standard variation fees.

- **£50** where there is no consultation required
- **£150** where the nature of the variation means that consultation is required

General

All fee levels are set in accordance with the provisions of Section 115 of the Highways Act 1980 and with Central Bedfordshire Council's Corporate Charging Policy. Fee levels will be reviewed on an annual basis.

No refunds will be made in the event of the surrender of the licence before expiry.

DETERMINING THE APPLICATION

The Council will normally seek to grant a licence for tables and chairs or portable advertising boards unless, in its opinion:

- there would be a significant effect on road safety from the siting of the tables & chairs or portable advertising boards;
- there are concerns over the recorded level of personal injury accidents in the vicinity of the premises;
- there would be a significant loss of amenity caused by traffic, noise, rubbish, possible vermin infestation, odour or fumes;
- there is already adequate provision in the vicinity of the premises;
- the placing of tables and chairs or portable advertising boards obstructs either pedestrian or vehicular access, or places pedestrians in danger;
- a minimum footway width of 1.2m after placing of the tables and chairs or portable advertising boards is not available to allow for the safe passage of users of the footway;
- adverse comments have been received as part of the consultation process;
- agreement cannot be reached between Central Bedfordshire Council and the applicant as to the position, size or method of demarcation of the licensed area or the number of tables and chairs or portable advertising boards to be sited within the licensed area, or
- a relevant objection has been received to the granting of the licence.

Should an application be refused there is no automatic right to appeal but the applicant will be given an opportunity to make representation in writing to Central Bedfordshire Council.

The licence will be granted for a period of 12 months. The licence will not be renewed automatically. Compliance with the terms of conditions of any previous licence will be taken

into account when considering any application for renewal. The Council reserves the right to refuse renewal applications.

The licence is issued to the applicant only and is not transferable.

CONDITIONS

The following conditions will be attached to every licence granted under the above policy:

- the licence is granted in accordance with compliance with the advice given in the guidance notes issued at the time of application;
- the tables and chairs or portable advertising boards placed on the highway after the granting of a licence must be in accordance with the details and plans provided at the time of the application. No changes are permitted without prior approval of the Council;
- all tables and chairs and portable advertising boards authorised by the licence must be removed by midnight on the day the licence expires, unless a renewal licence has been applied for and granted. Renewals must be applied for at least 2 months prior to the expiry date to allow sufficient time for the application to be considered;
- the licensee shall maintain a public liability insurance policy up to the value of £10million (minimum £5 million) against any liability, loss or damage, claim or proceeding whatsoever arising under Statute or Common Law in respect of the placing and maintaining of the tables and chairs or portable advertising boards on the highway or their removal there from;
- the licensee shall be responsible for keeping the designated area in a clean and tidy condition at all times. Under their duty of care they must ensure that any waste produced is handled safely and in accordance with the law. They must keep all waste safe, prevent it from escaping from their control and ensure that it is only handled or dealt with by persons that are authorised to deal with it;
- the licence may be suspended, where necessary, to allow highway maintenance and any other necessary remedial work to be carried out at the location covered by the licence. A reasonable period of notice will be given to the licensee where possible. The Council will not be liable for any loss of earnings arising out of the suspension of a licence;
- any umbrellas provided must not protrude beyond the designated boundary of the licensed area. They shall be kept in good condition so as not to detract from the appearance of the street;
- the placing of speakers or any other equipment for the amplification of music within the licensed area is strictly prohibited unless authorised by a premises licence issued under the Licensing Act 2003. Any such authorised music must not cause a nuisance or annoyance to others;
- any sales of alcohol within the licensed area must be authorised by a premises licence issued under the Licensing Act 2003. Areas of alcohol consumption only must be included on the premises licence;

- any material alteration to the Means of Escape, which affects people using the Means of Escape, inside, or in the immediate vicinity outside of the premises must be recorded in the premises' Fire Risk Assessment as a significant finding. Control measures should be put in place to reduce risk within the area as well as recording them. A review of the hazards and risks should be ongoing throughout the period the premises are in use;
- facilities provided in accordance with the licence are for seated customers only. Vertical consumption of food and drink is prohibited and the designated area must be used solely for the purpose of consumption of refreshments;
- no additional charge shall be made to customers for the use of the tables and chairs within the licensed area;
- the licensee may only use the land for the placing of tables and chairs or portable advertising boards in the course of their business, only during the hours permitted by the licence and only within the defined area covered by the licence;
- the use of the land must be personal to the licensee only;
- the licensee may only use the area for the purpose of consuming refreshments in connection with the business and not for any other purpose whatsoever;
- no tables and chairs, portable advertising boards or barriers may be placed in the area until a licence has been granted;
- no other items may be placed on the highway within the licensed area other than those approved in accordance with the application and the licence when granted, and
- the licensee is responsible for carrying out the reinstatement of the highway in the event of any damage to the highway occurring as a result of the activity. The permanent surface reinstatement shall be carried out to the satisfaction of the Council.

These conditions may be varied where appropriate to reflect any changes in local circumstances.

Enforcement

Failure to obtain an appropriate licence or failure to comply with the conditions attached to a licence under Section 115E of the Highways Act 1980 may result in a Notice being served on the licensee requiring them to take steps to remedy the breach as soon as practical but within 7 days of the date of the Notice.