

CHESHIRE EAST COUNCIL

REPORT TO: ENVIRONMENT AND PROSPERITY SCRUTINY COMMITTEE

Date of Meeting: 8th February 2011
Report of: Head of Regeneration
Subject/Title: Pavement Café Policy
Portfolio Holder: Councillor Menlove

1.0 Report Summary

- 1.1 That the Committee members provide comments on the reaffirmation of the inherited policy for the control and licensing of pavement cafés on the highway.
- 1.2 The Council during its first 18 months has been approving and granting licences under the Highways Act for businesses to place tables and chairs on the highway to enhance their trading. Such permissions and licences have been granted in accordance with the Highways and Town and Country Planning Acts, where appropriate, within strict guidelines.

2.0 Recommendations

- 2.1 **Members of the Committee are asked to provide comment on proposed Pavement Café Policy prior to the Policy being submitted to the Strategic Director Places for formal approval.**

3.0 Reasons for Recommendations

- 3.1 The Pavement Café Policy is aimed to set out the Council's consistent approach, for owners and managers of restaurants, cafés, bars, tea rooms, coffee shops and snack bars, who may be considering placing tables and chairs outside their premises.
- 3.2 The current operation of the Pavement Café licensing and conditions has served the Council well and adequately controlled pavement cafés for the benefit of shoppers and visitors, the business concerned and the economic well-being of the area.
- 3.3 It is considered that the policy for pavement café s should be approved subject to the licence conditions, as set out in the Appendices, being adhered to.

4.0 Wards Affected

- 4.1 This report affects all wards equally.

5.0 Local Ward Members

- 5.1 This report affects all wards equally.

6.0 Policy Implications including - Climate change - Health

- 6.1 There are no human resources implications of the recommended option.
- 6.2 The policy is intended to ensure that highways enforcement is carried out in a fair and consistent way.
- 6.3 Enforcement of highways legislation is intended to bring about a reduction in environmentally irresponsible behaviour.
- 6.4 Enforcement of highways legislation is intended to bring about a reduction in environmental problems including the appearance of the street scene and obstructions caused by alfresco refreshment areas. Local people, businesses and communities can expect to see an improvement in the street scene and safety as a result of this enforcement.

7.0 Financial Implications (Authorised by the Borough Treasurer)

- 7.1 The Strategic Director confirms that the costs of implementing this policy will be met from existing budgets.
- 7.2 The Council proposes a charge £550 for an initial licence under the Highway Act for a pavement café and £330 for the licence to be renewed on an annual basis. This twelve month cycle enables the Council to monitor the pavement cafés and either introduce additional conditions or not to renew a licence should there be any negative impact from the facility. The applicant would also be liable for any charges the Council levies with respect to planning approval, listed building consent and premises licence.

8.0 Legal Implications (Authorised by the Borough Solicitor)

- 8.1 It is an offence to deposit items on the highway without authorisation and the Council is empowered to prosecute offenders under the Highways Act 1980 and the Police Town Clauses Act 1847. Other powers are available under the common law. Strictly, anything located on the highway, which is not authorised by law, is capable of amounting to an obstruction. This applies to both permanent and temporary features. As a result, the scope of these sections has been extended to encompass related matters such as 'alfresco' refreshment areas.
- 8.2 Under Part VII A of the Highways Act 1980 the Council has the power to licence the placing of items and amenities on certain types of highway, which includes footpaths, footways, pedestrian areas and other highway where

vehicular traffic is prohibited. In some cases, the consent of the frontagers is required and special considerations apply in respect of a walkway.

- 8.3 The Council has the power to impose such terms and conditions in the licence as it thinks fit, including a requirement to indemnify the Council in respect of the placing/retention of the item on the highway. In respect of fees, if the Council is the owner of the soil beneath the highway it can impose such reasonable charges as it may determine. Where the Council is not the owner of the soil beneath the highway, it can only require the payment of such charges as will reimburse the council for its reasonable expenses in connection with granting the licence. Prior to granting a licence the Council is required to post notices on the street, serve notice on the owner and occupier of any premises appearing to the council to be likely to be materially affected and undertake consultation. The licence must not be granted until the Council has taken into consideration all representations made to it in connection with the proposal within the period specified in the notice.
- 8.4 If it appears to the Council that the licensee has committed any breach of the terms of the licence, it may serve a notice on him requiring him to take such steps to remedy the breach as are specified in the notice within such time as is so specified. If the person fails to comply with the notice, the Council may take the steps itself and any expenses incurred, together with interest may be recovered from the person on whom the notice was served.
- 8.5 The advantage of entering into a licence with each individual person or business is that the Council can ensure compliance with the terms and conditions of the licence. Without a licence, the Council can only set down guidelines and then take enforcement action where appropriate.

9.0 Risk Management

- 9.1 The risk of not implementing this policy is that when we take a case to court we have no formal policy to back up the action being taken.

10.0 Background and Options

- 10.1 Pavement cafés are areas of the public highway on which tables and chairs may be placed and where food and/or drink are consumed. Typically restaurants, cafés and public houses, where there is sufficient space on the highway, like to expand their trading opportunities and offer continental style service by having an “Alfresco” seating area outdoors.
- 10.2 The “Alfresco” café culture is becoming a popular attraction in towns and cities across the country. A pavement café which is well designed and located and fits with the local area can add value by increasing the use and vibrancy of the street and creates feeling of well-being. Through pavement cafés businesses can increase trade not only for the particular premises concerned but for other businesses in the area due to the attraction of visitors and shoppers.

- 10.3 The Council recognises the economic benefits and enhancement of the street scene that these schemes can provide. However it is important that they are well designed and set out and do not impinge on safety or inconvenience users of the highway.
- 10.4 The Council wishes to encourage the alfresco culture but at the same time ensure that the public's right to use the highway is not adversely affected. Implemented schemes must not create a hazard or obstruct the highway for pedestrians, blind or visually impaired people or people with limited mobility. The facilities must be provided to the highest possible standards without any detrimental effect upon the community as a whole.
- 10.5 The Council has licensed and approved pavement cafés in the first year of the Council under set licence conditions. These conditions are set out in Appendix A to this report and underpin the Council's policy for pavement cafés on the highway. Additional conditions are applied where it is proposed to serve alcohol and these are set out in Appendix B. The guidance provided to applicants can be found in Appendix C.
- 10.6 The Council proposes to charge £500 for an initial licence under the Highway Act for a pavement café and £330 for the licence to be renewed on an annual basis. This twelve month cycle enables the Council to monitor the pavement cafés and either introduce additional conditions or not renew a licence should there be any negative impact from the pavement café. The applicant would also be liable for any charges the Council levies with respect to planning approval, listed building consent and premises licence.
- 10.7 The charges for pavement café licences will be reviewed on an annual basis along with all other charges the

11.0 Access to Information

The background papers relating to this report can be inspected by contacting the report writer:

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Pavement Café Policy and Conditions

1. A licence must be granted for the use of the highway for tables & chairs for an outdoor café to be lawful. It does not grant permission for the use of the highway for any other purpose including the sale or display of goods or services.
2. Unless express written permission is granted by Cheshire East Borough Council ('the Council'), this Licence may not be assigned or sublet to any other business.
3. The Licence shall remain in force for a period of 12 months from the date thereof provided that if there is a breach of any of these conditions the Council reserves the right to withdraw the Licence by giving the Licensee seven days notice in writing of the Council's intention to withdraw the same.
4. All reasonable directions of the Council or its representative are to be complied with.
5. Tables, chairs, furniture, fittings and barriers associated with the refreshment area or café (Furniture and Fittings) shall not encroach on to the highway beyond the area licensed for the purpose by the Council, and shown on the plan annexed to this Licence ('the Licensed Area'). Care shall be taken with the siting of umbrellas and awnings neither of which may extend outside the Licensed Area. The whole of the adjacent highway shall remain open for pedestrian use at all times and shall not be obstructed by public use of the Licensed Area. Free and unobstructed passage of pedestrians on the highway must be maintained at all times so as not to cause any nuisance annoyance or obstruction thereof and the Licensee shall:-
 - (a) ensure that all persons taking refreshments do not encroach beyond the Licensed Area
 - (b) be responsible for the conduct of all persons using the Licensed Area.
6. Tables and chairs on the public highway shall be positioned to allow the safe passage of pedestrians, blind or visually impaired people and people with limited mobility. The tables and chairs must be placed so as not to obstruct drivers' sight lines or highway signs. They must be within an area defined by an approved temporary barrier sited within an area permanently marked on the highway only by means of an approved brass stud situated at each corner of the Licensed Area, installed by the Council. The costs of providing, installing, maintaining, removing and making good marker studs are to be borne by the Licensee.
7. A minimum free width of 1.8 m or in fully pedestrianised areas, one third the width of the public highway (measured from the centre of the highway),

whichever is the greater, must remain free and unobstructed for pedestrians. This minimum may be increased where there are intense levels of pedestrian traffic or where there is street furniture on the highway. At bus stops 2.3 m of unobstructed footway will be required. Designated outdoor café areas on opposite sides of the street must be separated by 3.5 m measured along the street to permit fire brigade access or passage.

8. In the event of the surface of the highway being disturbed by the Licensee by any means, the Licensee shall restore and made good the highway at the Licensee's cost, to the satisfaction of the Council. The Licensee shall be responsible for all damage caused to the Licensed Area as a consequence of its use, whether caused by the Licensee or not.
9. Access for emergency services must be available at all times. If the Licensee is requested to move any Furniture and Fittings or other items within the Licensed Area by the Council, Police or Fire Officer or Statutory Undertaker
 - (a) in the interest of public safety (for example on occasions when there are demonstrations, public unrest and disorder, bomb warning or fire alert) or
 - (b) for the purpose of carrying out works in on or under the highwaythe Licensee shall immediately comply with that request.
10. Access for those working for adjacent properties to put scaffolding over or adjacent to a Licensed Area, and to carry out works on that scaffolding, is to be afforded at all reasonable times.
11. In the event that, as a result of the Council requiring the highway for any reason or cause arising in connection with its powers and duties as highway authority, the Licensed Area is not available for use by the Licensee, there shall be no claim against the Council for loss of trade.
12. Any Furniture and Fittings associated with the use of the Licensed Area shall be installed and maintained to the satisfaction of the Council.
13. Access to the Furniture and Fittings and the Licensed Area shall be afforded at all reasonable times to officers of the Council for the purposes of inspection.
14. The Licensed Area shall be kept in a clean, litter free and in a tidy condition during its operation and used glasses, plates, cutlery, containers, papers and all other articles thereon shall be removed on a regular basis and at the close of business each day and all refuse shall be removed. Care should be taken to ensure that litter does not stray onto adjacent areas, any windblown litter outside the perimeter of the Licensed Area must be collected. Cleansing of any spillages is to be dealt with by the Licensee as soon as they occur.
15. The sale of food and/or drinks from temporary stalls or takeaway food from outdoor sale points is prohibited. No outdoor ice-cream or drinks vending machines or stalls will be allowed. Covers/ tables must be serviced directly

from immediately adjacent building premises of a permitted A3/food use, where the food is prepared and sold ('the Premises').

16. Any signage, flags, banners, "A" boards or temporary advertisements displayed or placed in on or around the Licensed Area must be in accordance with the Council's Clear Way Forward Policy and Guidelines.
17. The Licensed Area will only be open for the use as a refreshment area between the hours of 07.00 hrs and 23.00 hrs or such hours as may be designated on the Licence (the Refreshment Period).
18. Furniture and Fittings may only be placed on any part of the Licensed Area which is shared with vehicles (partially pedestrianised areas) 30 minutes after vehicular access is closed and must be removed and the Licensed Area completely cleared no later than 30 minutes before vehicular access re-commences.
19. The Licensee shall remove all Furniture and Fittings and any other items within the Licensed Area by the end of a Refreshment Period and shall not place any Furniture and Fittings or any other items within the Licensed Area before the commencement of a Refreshment Period.
20. The Licensee will be responsible for the cleanliness of the Licensed Area at all times. The Licensed Area must be kept clean and litter free. Care should be taken to ensure that litter does not stray onto adjacent areas, any windblown litter outside the perimeter of the Licensed Area must be collected.
21. A suitable litter/refuse bin(s) must be provided within the Licensed Area at all times during the Refreshment Period. The Licensee will be responsible for the removal and collection of all waste material.
22. Failure to comply with the cleaning requirements under this Licence will result in the serving of a Notice requiring compliance with the terms of the Licence. In the event of failure to comply with the Notice, the Council will carry out the work deemed necessary and recover costs from the operator. Repeated failure to comply with the cleaning requirements may result in revocation of the Licence.
23. The Licence will not be renewed, or may be cancelled, if the terms and conditions are not complied with after two written warnings have been issued by the Council.
24. The Licensee shall pay to the Council on the date of the Licence a licence fee in the sum of £500 for the first year and £330 at subsequent renewals, if granted.
25. Renewals must be applied for in writing to the Area Highway Manager of the Council no later than two months before the expiry of the current Licence.
26. The Licensee shall indemnify and keep indemnified the Council from and against all actions demands costs charges or expenses arising out of or in connection with the use of the refreshment area and for this purpose shall

take out an insurance policy in at least the sum of £5,000,000 (Five million pounds) for any one accident without limiting the number of claims arising out of any one accident with an insurance company to be approved by the Council and shall produce such policy and the receipt for the premium thereof to the Council.

27. A legible copy of the current Licence and accompanying plan must be displayed for inspection at any time by the Council.

Additional Conditions Relating to Public Houses

1. The Licensed Area must, at all times, be monitored by a CCTV system which is capable of being viewed on a monitor by staff working in the bar area. This system must record images and store them unedited for a period of at least 7 days. Copies of the images will be made freely available to a constable or an employee of the police authority or licensing authority upon request.
2. The Licensed Area must be cleared of all furniture, fittings, barriers, umbrellas etc. associated with it and they must be stored inside your premises outside the times covered by this licence.
3. The Licensed Area must be frequently visited by a member of staff and any glasses, bottles, crockery, cutlery etc. that are finished with must be cleared away as soon as is practicable. These visits must also monitor those persons using the Licensed Area to ensure that it is not frequented or resorted to by people who are intoxicated.

GUIDANCE ON THE PROVISION OF REFRESHMENT FACILITIES ON THE HIGHWAY BY PERSONS OTHER THAN COUNCILS

1. INTRODUCTION

You can only provide and operate a refreshment facility on the highway with permission from Cheshire East Council (the Council) as a highway authority. However, The Council will only grant you permission if you comply with certain criteria and provide proof of any other permissions (or exemptions) that may be required.

This guidance has been produced to help you to apply for permission from the Council and understand the criteria and the other permissions which may be applicable.

2. GENERAL CRITERIA

(a) Designated Area

You will only be allowed to provide a refreshment facility within a designated area operated and serviced from your existing premises. In proposing the extent of the designated area you should have consideration for the following:

- It should be located adjacent to your premises and contained within its frontage.
- It should not discourage pedestrians from using a footway or cause them to make sharp deviations to their route.
- It should not conflict with accesses or dropped crossings.
- It should not obstruct the sight lines of drivers or pedestrians or obscure highway signs.
- It should leave a clear width of highway available for use by pedestrians and emergency vehicles. Generally, this should be 1.8m on footways, 2.3m on footways with a bus stop or, in pedestrianised areas, 1.85m or 1/3rd of the highway width from the centre line (whichever is the greater). These may be increased or decreased depending on the particular circumstances (e.g. where there are high pedestrian volumes, particularly wide highways, refreshment facilities on both sides, etc.)

You should be aware that, in some cases, there will be no scope to give permission for a refreshment facility because of the above and your application may be refused.

You will be required to allow the emergency services or the owners of apparatus access to the designated area at any time. You will be required to comply with instructions of the Council, Police, Fire Officer, Statutory Undertakers or any other person or body with a statutory interest in this respect. Under such circumstances you will have no recourse to a claim for loss of trade.

(b) Barriers

The designated area must be delineated and guarded by portable barriers approved by and maintained to the satisfaction of the Council. These should be reasonably rigid, designed to resist being blown over by the wind or passing traffic and have:

- A smooth panel /handrail (of at least 150mm depth) fixed at a height of between 1m and 1.2m above ground level.
- A tapping rail (of at least 150mm depth) fixed at a height no more than 200mm above ground level.

The barriers should be of contrasting colours (such as black and white or other colour combinations) so that they can be easily identifiable by people who may be visually impaired but do not overly dominate the street scene.

You will be required to keep the designated area clean and tidy at all times and should manage it so that used crockery and cutlery, refuse and spillages are removed promptly. Please be aware that you could be charged for the cost of making good any damage to, or disturbance of the highways consequent to the use of the refreshment facility.

(c) Hours of Operation

Permission for the refreshment facility will only be valid between 07.00 and 23.00. Outside of these times, you will be required to remove the refreshment facility and all furniture, fittings, barriers, umbrellas, awning etc. associated with it, and store them inside your remises. Permission may be revoked if you do not adhere strictly to these time restrictions.

(d) Indemnity

You will be required to indemnify the Council against all losses and claims for injury or damage to any person or property which may arise out of the provision of the refreshment facility. For this purpose, you must provide proof that you have taken out an insurance policy in at least the sum of £5,000,000 (Five million pounds), for one incident with the number of incidents unlimited, with an insurance company to be approved by the Council.

3. OTHER PERMISSIONS WHICH MAY BE REQUIRED

You may be required to obtain other permissions in order to be able to provide and operate a refreshment facility. The Council will require proof of such permissions (or exemption from permission) before giving you a licence.

There may be fees or charges made for making applications and/or the granting of any of these permissions. Therefore, before you submit your application, it is recommended that you seek the advice of the Council, as they may be able to provide advice on specific cases before an application is made.

Although this will not guarantee that you get the permission, it may help you to avoid paying any fees or charges for an application that is likely to be refused. It is also a good idea to discuss your proposal with all your neighbours, as they may be included in the consultation process used when assessing an application.

(a) Planning Permission

Planning permission may be required where there is a material change of use of land. The Planning Department will bear in mind the need to protect residents of nearby properties from unreasonable nuisance and may therefore refuse or attach conditions or limitations to your application (e.g. restricted hours of operation).

(b) Listed Building Consent

A refreshment facility and its associated furniture will not be allowed to adversely affect the special architectural or historic character of a listed building or the Conservation Area in which it may lie. Therefore, you may be required to obtain listed building consent for any work to a listed building, internally or externally or where the environment of an adjacent listed building is affected by the proposal.

(c) Premise Licence

In order to serve alcohol as part of a refreshment facility, the area you propose to use must be included in the premise licence required for the supply of alcohol on that premises. Therefore, you may need to apply for an amendment to your premise licence if this is not included.

4. APPLICATION PROCESS

As previously stated, it is recommended that you seek the advice of the Council before you submit your application. To consider your proposal, the Council will require you to submit the following at least 3 months prior to the date on which you wish to start:

- A complete copy of the application form.
- 6 copies of a location plan to a scale of 1:1250, clearly marking the existing premises and the proposed designated area edged and hatched in red.
- 6 copies of a site plan to scale of no less than 1:100 showing the exact location and dimensions of the designated area and its associated furniture (in the case of a pedestrian area, the line of the opposite frontages must be shown).
- Proof of indemnity, in the form of a valid insurance policy.
- A cheque made out to 'Cheshire East Council' for the initial licence charge.

In order to avoid a delay in the processing of your application, you may also wish to provide the following required documents at the time of your application:

- Proof of planning permission or exemption.
- Proof of listed building consent (where applicable).
- Proof of premise licence (where applicable).

When you have submitted the above, your proposal will be sent for consultation to the emergency services, the Planning Department and premise licensing authority. If your proposal is to provide and operate a refreshment facility on a highway which is not pedestrianised, the Council must also publish a notice at the location and serve a copy on the owners or occupiers of premises which are materially affected. The Council must allow 28 days from the publication of this notice for representations to be made.

Your proposal, the views of all the consulted bodies and any representations received will then be considered by the Highways Office who will accept (with or without special conditions) or refuse your application. If your application is accepted, you will be issued with a licence.

You will be required to display a legible copy of your licence, in a conspicuous position on your premises, adjacent to the refreshment facility so that it can be inspected by the Council or any other person with an interest at any time.

Your licence will be valid for a period of twelve months from the date of issue and must be renewed annually. Licence renewals should be sought at least 2 months prior to the expiry of the existing licence. You will be required to pay an additional charge for these annual renewals and the Council reserves the right to revert to initial charge should the renewal charge not be paid prior to the expiry of the existing licence.

CHESHIRE EAST COUNCIL
APPLICATION FORM FOR THE PROVISION OF REFRESHMENT FACILITIES ON
THE HIGHWAY BY PERSONS OTHER THAN COUNCILS

Applicant's Name:	
Applicant's Address:	
Applicant's Tel No:	
Name & address of premises to which proposal relates:	
Name of highway affected:	
Brief details of the proposal:	
Proposed start date & times of operation:	
Have you obtained Planning Permission or exemption prior to submitting your application? (if yes, please attach a copy)	
Does the proposal affect a listed building or conservation area, and if so, have you obtained a consent or exemption prior to submitting your application? (if yes, please attach a copy)	
Do you intend to serve alcohol as part of your proposal and if so, is the proposed designated area included on your premise licence? (If yes, please attach a copy)	
Have you taken out insurance to indemnify Cheshire East Council? (if yes, please attach a copy)	
Please attach a cheque for the relevant charge made payable to "Cheshire East Council"	