

# **CHESHIRE EAST COUNCIL**

## **REPORT TO: ENVIRONMENT AND PROSPERITY SCRUTINY COMMITTEE**

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**Date of Meeting:** 22 November 2011  
**Report of:** Head of Highways and Transport  
**Subject/Title:** Review of Pavement Café Policy  
**Portfolio Holder:** Councillor Menlove

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### **1.0 Report Summary**

- 1.1 The Pavement Café Policy was approved on 18th March 2011 under delegated powers by the Strategic Director Places after scrutiny by this Committee on the 8<sup>th</sup> February 2011.
- 1.2 This report provides additional information and background to answer a number of questions posed by members of the Committee and to review the previous 6 months implementation of the Policy.

### **2.0 Recommendations**

- 2.1 **Members of the Committee are asked to provide comment on proposed Pavement Café Policy.**

### **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.

### **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 – Carbon Reduction - 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.

- 6.3.1 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 have been met from existing budgets.
- 7.2 A recent Cabinet meeting requested that the current fees associated with licensing alfresco seating on the highway will be reviewed taking on board the constructive comments received from the businesses affected and from local town councils. The Council has been working hard to support the future prosperity of all its town centres with schemes such as the "Love Local Life" and is committed to continually review its policies and fees.

The Strategic Director Places has therefore made the informed decision in consultation with the Portfolio Holder for Environment to revise the fee structure to provide a greater concession to smaller businesses and to encourage the already popular alfresco culture.

### Original Fee

Seating up to four persons £150 initial licence and £100 annual renewal

Seating greater than four persons £550 initial licence and £330 annual renewal

### Revised Fee

Seating up to six persons £100 initial licence and on each annual renewal

Seating greater than six persons £550 initial licence and £330 annual renewal.

- 7.3 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.
- 7.4 The pricing structure means the authority only recovers the cost it incurs through the application process and enforcement. The Authority has given a concession for smaller businesses where a licence is £100 with an annual renewal of £100. This fee does not cover the costs of administering the Policy.

## **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 Town Police 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.
- 8.6 Requiring a licence will also allow the Council to ensure that the businesses have the necessary public liability insurance in place, particularly on an annual basis. Public liability insurance should be in place for any business, but it ensures there are sufficient funds available in the event that a claim is made against the Council, as highway authority, for any accidents or loss caused by the presence of the tables and chairs on the highway. In such circumstances, the Council will look to rely upon the indemnity, backed by the insurance policy. This will not prevent any injured person from naming the Council as a defendant in proceedings (in addition to the business owner), as an injured person may make claims against several defendants if they believe they are responsible, but it will avoid the Council from having to pay, from its own pocket, any costs and damages awarded in the event of a claim. Without a licence, the Council would face increased costs in insisting on public liability insurance being in place. It could insist on the policy being in place by seeking to remove the table and chairs as obstructions unless proof of a policy is provided, but this is more onerous on the Council and would add considerably to the Council's costs of enforcement.

8.7 Section 115F of the Highways Act 1980 specifically mentions the highway authority's power to seek an indemnity, thus, it was considered appropriate and reasonable by the drafters of the Act's provisions that authorities should be able to obtain an indemnity when granting a licence under this Part of the Act. In the absence of an indemnity or any court placing the entire responsibility for a claim with the business, the Council would have to pursue the individual owner, establishing that they are responsible and recover any costs incurred from them. Legal costs would be incurred in doing so, which may not be recoverable. Pursuing the business for such costs assumes that the business/sole trader has sufficient funds to make it worth pursuing. Without the indemnity and public liability policy being in place the Council is risking, in legal proceedings, having to pay the whole or part of the claimant's and its own legal costs in defending a claim plus any damages awarded in the event of a successful claim.

## **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.

9.2 All responsible premises should carry public liability insurance and therefore seeking an amendment to the policy to cover the presence of tables and chairs on the highway as a part of their business enterprise is not an onerous request. It is standard practice and reasonable for the Council to seek such insurance and to check the policy is in place across all of its dealings with businesses in such circumstances. The Council's insurers would expect the Council to act prudently in its activities, part of which is ensuring businesses have public liability insurance in place when their proposed actions affect either the highway or Council premises. Having contacted the Council's insurers, they have stated they would expect every business to have their own public liability insurance in place in any event which should cover this and it would be very concerned if the business did not have such insurance for its operations generally as that business is dealing with the public.

9.3 On a general note, if the business concerned did not have public liability insurance and there was a successful claim against the Council, the Council has to meet the first £50,000 of each individual claim. It is not considered reasonable for the Council to have to bear such risk or costs when it is the responsibility of the business owner to obtain public liability insurance for activities relating to its own enterprise.

## **10.0 Background**

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 has become a popular attraction in towns and cities across the country. A pavement café which is well designed, 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 half of the year under a set of 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.
- 10.6 The charges for pavement café licences will be reviewed on an annual basis along with all other charges.

## **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 the appropriate licence fee.
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.