

# CHESHIRE EAST COUNCIL

## REPORT TO: SCRUTINY COMMITTEE

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**Date of Meeting: 18 September 2012**

**Report of: John Nicholson, Strategic Director, Places and Organisational Capacity**

**Subject/Title: Alfresco Policy - Progress Update**

**Portfolio Holder: Councillor Rod Menlove**

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### **1.0 Report Summary**

- 1.1 The Alfresco policy was launched in the Borough in March 2011.
- 1.2 The commercial benefits of Alfresco are well recognised by the sector, with large “chain” type companies incorporating such areas into their standard operating models with smaller independent retailers actively pursuing a similar approach.
- 1.3 This paper is seeking to obtain member views on progress made and for members to consider/comment on feedback received from retailers associated with the current charging structure.

### **2.0 Recommendation**

- 2.1 That members note the progress made since the introduction of the Alfresco Policy.
- 2.2 That members support the proposed revised charging regime.

### **3.0 Reasons for Recommendations**

- 3.1 Regulation of alfresco areas is necessary to ensure that areas remain attractive and that any designated areas are managed in a way that does not create an obstruction for highway users.
- 3.2 Feedback received from traders since the policy was introduced suggests that the current charging regime does not reflect the needs of all traders and in some cases is prohibitive to business growth. A revised charging regime based upon feedback received from traders will hopefully address their concerns and make the scheme more

attractive to all businesses that intend to take advantage of Alfresco trading opportunities.

#### **4.0 Wards Affected**

4.1 All wards.

#### **5.0 Local Ward Members**

5.1 All

#### **6.0 Policy Implications (including carbon reduction and health)**

6.1 There are no wider policy implications arising from the modification of the Afresco policy.

#### **7.0 Financial Implications (As per previous reports)**

7.1 A Cabinet meeting held last year requested that the current fees associated with licensing alfresco seating on the highway be amended and further reviews undertaken following feedback from traders. 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, outlined below:

- a) 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
- b) Current 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.
- c) Proposed further amendments:- Figures in brackets denote year one fees only and allow the authority to recover the additional costs associated with setting up of the licence.

Operating for	Less than 6 seats	7-12 seats	More than 12 seats
Less than 6 months	£50 (£100)	£100 (£200)	£200 (£400)
More than 6 months	£100 (£150)	£200 (£300)	£330 (£550)

7.2 The review 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 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 and Options

- 10.1 The original policy was introduced to allow for the regulation of the growing number of Alfresco type facilities that were being deployed across the Borough.
- 10.2 Across the country national operators, Costa, Starbucks etc., use alfresco areas as a part of their normal operating model. These areas generate significant revenues for the companies involved.
- 10.3 A number of small businesses expressed concern regarding the charging structure, this resulted in a number of meetings where their concerns were aired. A revised charging structure has been proposed as a consequence.
- 10.4 Options  
 Alfresco areas are recognised as “trade boosters”, alerting the public that a business is open for trade, providing additional seating areas and providing an area where customers who smoke can smoke. On warm sunny days these areas are popular and add to the ambience of the street scene.  
 Regulation, in some form or other, is required to ensure that appropriate standards are met, both from the perspective of the highway authority and the planning authority. The cost of any regulation must be met by those enjoying the benefit, hence the need to charge for the licence.  
 It is acknowledged that larger businesses enjoy a greater benefit from the facility and also that they are more likely to operate such facilities all year round. The following charging structure is therefore proposed:

Operating for	Less than 6 seat	7-12 seats	More than 12 seats
Less than 6 months	£50 (£100)	£100 (£200)	£200 (£400)

More than 6 months	£100 (£150)	£200 (£300)	£330 (£550)
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Figures in brackets denote year one fees only and allow the authority to recover the additional costs associated with setting up of the licence.

At this time no consideration has been given to the erection of permanent structures on the highway. A number of sites currently exist (predominantly in Alderley Edge) where the areas have been defined using decking type structures. Enforcement action is to be taken to ensure that any unauthorised structure is removed.

### 10.3 Next steps

The authority is now generally well placed with the large operators and needs to continue to work with them to deliver the necessary planning permissions for their activities.

It is now necessary to continue the work with the smaller operators to establish a quality street scene environment that encourages residents and visitors alike to contribute to the developing local economy.

### 11.0 Access to Information

Any background information relating to this report can be obtained from the report writer:

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