

PROVISION OF AMENITIES ON HIGHWAYS – PART VIIA OF THE HIGHWAYS ACT 1980

EXECUTIVE MEMBER: Councillor A Holliday, Portfolio Holder for Environmental and Cultural Services

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Summary: The report seeks approval to a policy being adopted which will regulate how the Council deals with applications for permissions under the Highways Act 1980 to execute works or use objects on the highway.

Recommendation:	That: (a) the policy as annexed to the report as Appendix A be approved; and (b) that part of the policy dealing with the delegation of matters be recommended to Council for approval, namely the determination of applications shall be by a Licensing Sub-Committee or the Head of Legal and Democratic Services and that future amendments to the policy be dealt with by the Taxi and General Licensing Panel.
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Impact on delivering the Corporate Plan: The function is a statutory duty and not directly addressed by the Corporate Plan. Indirectly the criteria upon which applications are decided will consider community safety and quality living environment issues. The proposed policy can be amended at a later date if it does adequately address the new Corporate Plan in the process of adoption.

Impact on other statutory objectives (e.g. crime & disorder, LA21): One of the criteria which will be taken into account in determining an application is the prevention of crime and disorder. An application should be refused if it is likely to lead to an increase in crime and disorder (paragraph 4.5 of the draft policy refers).

Financial and human resource implications: The fee proposed of £130 (table and chairs or similar) or £80 ('A' boards) should be sufficient to recover the costs incurred in processing an application. Fees will be reviewed annually by the Executive as part of the normal fee setting process.

Project & Risk Management: None. The function is relatively straightforward and does not require a project plan. In respect of risk to the Council, any permissions required will require indemnity insurance to be in place.

Key Decision Status

- **Financial:** None.
- **Ward:** None.

Other Ward Implications: Could affect any ward but not in a significant manner. The draft policy allows for ward councillors to be consulted on an application.

1. INTRODUCTION

- 1.1 The Executive on the 5th April 2005 considered a report relating to the grant by the Council of permissions under the Highways Act 1980 to individuals for the placing of structures on the highway. Most notably this would be tables and chairs by café owners or public houses but could draw in 'A' boards and goods for sale placed outside shops. The Executive wished a policy to be drafted and asked the Taxi and General Licensing Panel to draft a policy and then report back. The policy as approved by that Panel is now annexed as Appendix A.
- 1.2 The Taxi and General Licensing Panel considered the matter of the 21st June 2005 and approved a draft policy but asked that it be made the subject of external consultation. During July and August 2005 the policy was consulted upon and various comments were received. These are attached at Appendix B to this report. The Cumbria County Council as highway authority indicated that they had referred the matter to their legal advisors who were trying to consolidate their position countywide. In other words all six districts would deal with applications and apply a uniform policy of the County Council. In August 2006 the County Council issued a draft 'service procedure' which it is intended County Council employees will work to. This effectively requires the County Council to redirect any applications for permissions to the relevant district council. A copy of the 'service procedure' is attached at Appendix C to this report. Much of it relates to dealing with obstructions. Paragraphs 4.14 to 4.17 deal with the granting of permissions. At the outset it is important to remember that this Council will only deal with applications for permission. Enforcement of those causing an obstruction without permission will remain with the County Council.

2. POLICY

- 2.1 The Taxi and General Licensing Panel reconsidered the draft policy on the 14th September 2006 and took into account, where relevant, the comments made as part of the consultation. Several amendments were made particularly with regard to fees, the inclusion of a general nuisance condition, the restriction of activities to be between 9.00am and 9.00pm and allowing permissions to last for two years.
- 2.2 Taking into account the amendments made by the Panel the policy has been further revised and this is attached as Appendix A to this report. The main principles are as follows:
 - 2.2.1 the fee for a permission, which will last two years, will be £130 for table and chairs and £80 for an 'A' board. In addition the applicant will be required to pay a fee to the County Council, currently set at £20 (paragraph 2.3 of the draft policy);
 - 2.2.2 in processing an application the County Council will be consulted and notices placed on site. A frontager who is encroached upon by the proposal will also be consulted. These are statutory requirements. In addition the police, district ward councillors, the relevant portfolio holder, the Council's Head of Leisure and Environmental Services (for street scene and environmental issues), the Council's Access Officer, the relevant Town Council and, if appropriate, the Lake District National Park Authority will be consulted (paragraph 3.1);
 - 2.2.3 applications will be determined on the same basis and in the same manner as applications under the Licensing Act 2003, namely that the four licensing objectives will seek to be promoted. These are the prevention of crime and disorder, public safety, the prevention of public nuisance and the protection of children from harm (paragraph 4);
 - 2.2.4 applications where objections are received other than County Council conditions which are subsequently agreed will be dealt with by a Licensing Sub-Committee; uncontested applications will be dealt with by the Head of Legal and Democratic Services (paragraph 5);
 - 2.2.5 a number of standard conditions relating to environmental, health and safety and other issues will be attached to a permission (paragraph 6); and

2.2.6 the procedures including forms have been standardised as far as possible.

3.0 CONCLUSION

- 3.1 This is not likely to be a significant issue. Only one application is pending. The grant of a permission to the application pending may result in other applications being received to regulate the position. There are not many premises however with tables and chairs outside. It is more likely that goods for sale and 'A' boards may generate more interest but as mentioned above, this is an issue for the County Council to deal with. It is that Council, as highway authority, which must consider whether such obstructions are worthy of enforcement taking into account their 'service procedure'. That procedure implies that immediate action will be taken if there is an immediate danger or if the obstruction affects the safety and convenience of the highway user.
- 3.2 Whilst the attached policy at Appendix A is detailed and perhaps rather cumbersome it does deal with all the issues, protects the Council, links tables and chairs to the closest licensing regime which is based on four important objectives (the Licensing Act 2003) and allows applicants to have a fair hearing should objections be received. The Executive is asked to endorse the work undertaken by the Panel and approve the policy as now drafted. Amendments to the scheme of delegation will require the endorsement of Council. Fee setting can be dealt with by the Executive as part of the annual review of fees. For the avoidance of doubt and completeness, the Executive cannot deal with applications as it is not by law, an Executive function.

List of Appendices

Appendix A – Draft policy;
Appendix B - Responses to consultation; and
Appendix C – Service procedure issued by Cumbria County Council.

List of Background Documents: Appendices B and C.

List of Consultees: On the original draft policy -as set out in paragraph 7.1 of the policy.