

COPELAND BOROUGH COUNCIL

HIGHWAYS ACT 1980, PART VIIA, SECTIONS 115A-K

POLICY RELATING TO THE GRANT OF PERMISSIONS FOR THE
PROVISION OF AMENITIES ON CERTAIN HIGHWAYS

1.0 INTRODUCTION

1.1 Part VIIA of the Highways Act 1990 sets out a variety of provisions enabling a council to provide services, amenities or recreation and refreshment facilities on the highway.

1.2 The highway is defined as:-

- (a) a highway in relation to which a pedestrian planning order is in force;
- (b) a bridleway;
- (c) a footpath (including a defined type of walkway);
- (d) a subway;
- (e) a footbridge;
- (f) a local Act walkway; and
- (g) any other type of highway whose use by vehicular traffic is prohibited by a traffic order but whose use by other traffic is not prohibited or restricted or regulated by such an order.

1.3 A council for the purposes of Part VIIA includes both the Cumbria County Council, as highway authority, and Copeland Borough Council.

1.4 Section 115E enables a council to grant various permissions and this policy sets out the procedure for making an application for a permission, the fee payable, how that application will be processed, on what basis it will be determined, who will determine it and what form the permission will take.

1.5 Section 115E states that

“a Council may grant a person permission –

- (a) to do on, in or over a highway to which this Part of this Act applies anything which the council could do on, in or over such a highway under section 115B(1) to (3) [power to carry out works and place objects or structures on the highway for the purposes which include providing a service for the benefit of the public or a section of it] or 115C [power to provide, maintain and operate facilities for recreation or refreshment] above; or

- (b) to use objects or structures on, in or over a highway to which this part of this Act applies –
 - (i) for the purpose which will result in the production of income;
 - (ii) for the purpose of providing a centre for advice or information; or
 - (iii) for the purpose of advertising.

1.6 This policy could apply to a variety of permissions:

- Tables and chairs outside public houses or cafés;
- Products for sale outside a shop, for example, greengrocers; and
- 'A' boards used for advertising nearby premises or goods.

It is important to remember that until a permission is granted an object outside premises could amount to an obstruction of the highway and contravene the Highways Act 1980. Enforcement of such matters remains with the Cumbria County Council as highway authority.

2.0 PROCEDURE FOR MAKING AN APPLICATION AND FEE

2.1 An application for a permission can be made to the Copeland Borough Council ("the Council"). The application should be on the form attached at Appendix 1.

2.2 The application form should be accompanied by:

- (a) a full copy of any planning consent issued by the Council including plans OR a copy of a letter stating that it is not required;
- (b) a copy of third party insurance for a minimum of £5 million in respect of any one incident;
- (c) details of furniture intended to be used;
- (d) a plan showing any boundary treatments, including planters;
- (e) the required fee (see paragraph 2.3 below).

2.3 The application should be accompanied by a fee of £130.00 (£80 for A boards). This fee is based on the cost of time necessary to process an application. Section 115F allows a council to require payment of such reasonable charges as it may determine. This is restricted to such charges as will reimburse the council their reasonable expenses in connection with granting the permission. Some local authorities charges substantial fees and this is permitted where the council owns the subsoil. This is unlikely to apply in Copeland where the subsoil will be owned by the Cumbria County Council or the landowners adjacent. In addition to the fee of £130.00 (or £80 as appropriate) any additional fees payable to those who are required to consent to the application may also be payable and the cost of any arbitration fees incurred (see

paragraph 3.2 below). The fee for Cumbria County Council consent as at September 2006 is £20.00.

3.0 HOW THE APPLICATION WILL BE PROCESSED

3.1 Once an application is received the following procedures will be followed:

- (a) a copy of the application will be sent to the Cumbria County Council, as highway authority, requesting their consent to the application;
- (b) if required a copy of the application will be sent to the Cumbria County Council, as planning authority, requesting any comments that they may have on the application;
- (c) a notice shall be published by affixing it in a conspicuous position at or near the place to which the proposal relates, the notice giving details of the proposal and specifying a period (not less than 28 days) during which representations can be made to the Council);
- (d) a notice shall be issued on the owner or occupier of any premises appearing to the council to be likely to be materially affected by the proposal, the notice giving details of the proposal and specifying a period (not less than 28 days) during which representations can be made to the Council; and
- (e) if the proposal affects frontage not in front of the applicant's premises the consent of the relative frontager will be sought.

(a) to (e) above are consultations required by statute. In addition the Council will send a copy of the application inviting comments within the 28 days referred to above to the following persons:

- (f) the Cumbria Constabulary;
- (g) district ward councillors;
- (h) the relevant Executive portfolio holder;
- (i) the Head of Leisure and Environmental Services (for street scene and environmental health issues);
- (j) the Council's Access Officer;
- (k) the relevant Town or Parish Council; and
- (l) Lake District National Park Authority if appropriate.

3.2 If consent is sought from statutory consultees the consent is not to be unreasonably withheld but may be given subject to any reasonable conditions. Such conditions could include limiting the consent to a period of time or subject to payment of a reasonable sum. Any question of whether a consent has been unreasonably withheld shall be decided by an arbitrator who, failing agreement, shall be appointed by the President for the Chartered Institute of Arbitrators. Any fee charged for the giving of a consent and/or the costs and expenses of such arbitration will be recovered from the applicant.

4.0 THE BASIS FOR DETERMINING APPLICATIONS

- 4.1 All representations received as part of the consultation process will be considered. The Council has a discretion on whether to grant any permission. Such discretion must not be applied unreasonably.
- 4.2 Applications will be considered on the same basis as applications are dealt with under the Licensing Act 2003. The Council will therefore seek to promote the statutory licensing objectives in considering applications made under section 115E. The licensing objectives are:
- (a) the prevention of crime and disorder;
 - (b) public safety;
 - (c) the prevention of public nuisance; and
 - (d) the protection of children from harm.
- 4.3 In considering the above objectives the Council and in addition to considering representations received will have regard to its licensing statement published under section 5 of the Licensing Act 2003 ('the Statement') and the guidance issued by the Secretary of State for Culture Media and Sport dated July 2004.
- 4.4 The extent to which the above objectives will apply depends upon the type of application. There will be full application where the application relates to tables and chairs outside a public house. There will only be partial application where the application relates to one 'A' board outside a shop. In the latter case only public safety issues may be relevant. Each application will be considered on its merits.
- 4.5 The following points will be taken into account under each licensing objective:
- (a) the prevention of crime and disorder:
 - (i) an application will be refused if it could lead to an increase in crime and disorder. Where an application is received in respect of a public house it is expected that an applicant will have considered whether the proposals have any impact on crime and disorder both within and in the vicinity of the premises and to propose practical steps to prevent crime and disorder. Further information can be found in paragraph 4.3 of the Statement.
 - (b) public safety
 - (i) an application will normally be refused if the remaining usable footway width is less than 2.5 m where peak pedestrian flow reaches 500 per hour and at least 1.8 m elsewhere. In cases where permission is subject for the display of goods for sale the Cumbria County Council will determine the maximum projecting width, such maximum could be between 0.6 m and 1.0 m with any display being placed at the rear of the footway;

- (ii) an application will normally be refused if pedestrians are forced or encouraged to cross vehicular carriageways where it is dangerous to do so;
- (iii) an application should be refused if the following apply:
 - if traffic, other than vehicular traffic, is prevented from entering the highway at any place where it could enter before or passing along it or having normal access to adjoining premises;
 - if vehicles are prevented from using the highway and which use is not prohibited by a traffic order; or
 - an emergency service is prevented from having access.
- (iv) an application may be refused if there is insufficient spacing between tables and chairs to enable disabled people, particularly those in wheelchairs, to enjoy the facility provided;
- (v) an application will be refused if the proposal constitutes a hazard to disabled people using the highway particularly those with difficulty of vision. It is expected that an applicant will have fully considered the risks posed to all disabled people by the placing of any type of structure on the highway and to propose solutions for removing such risk. If no satisfactory proposals are shown the condition relating to screening off the area will be attached to the permission; and
- (vi) an application may be refused if the proposal is incompatible with the surrounding area, for example, a street café next to heavy industry if this could be prejudicial to health.
- (c) the prevention of public nuisance:
 - (i) an application will be refused if it is likely to cause excessive or uncontrollable amounts of litter; and
 - (ii) an application will be refused if it is likely to cause an unacceptable level of noise, disturbance, smell, or other nuisance to users of the highway or adjacent properties, particularly residential properties. Clauses 4.5.7 to 4.5.14 and 4.5.20 to 4.5.21 of the Statement apply.
- (d) the protection of children from harm:
 - (i) clause 4.6 of the Statement will be taken into consideration.

5.0 DETERMINATION OF APPLICATIONS

- 5.1 An application for permission relating to a public house or cafe or other structure (not including an 'A' board) will be considered by a Licensing Sub-Committee, if objections are received; otherwise the Head of Legal and Democratic Services will issue the licence. Representations received from the Cumbria County Council will not be deemed to be an objection unless the applicant disagrees with the Cumbria County Council. Applications referred to a Sub-Committee will be dealt with by a hearing and follow the procedures contained in the Licensing Act 2003 (Hearings) Regulations 2005 save that the formal time limits for service of notices, convening a hearing, etc will not apply.
- 5.2 An application for permission relating to an 'A' board will be considered by the Head of Legal and Democratic Services. The application will be dealt with by way of written representations only received during the consultation period only.

6.0 GRANT OF PERMISSION

- 6.1 Where an application is granted it will be granted subject to the following conditions:
- (a) Permission to place a structure on the highway does not imply an exclusive right to the area of public highway. The operator should be aware that the highway authority and others (for example, the police and statutory undertakers) will need access at various times (including emergencies) for maintenance, special events, improvements, etc. This may mean that you will not be able to place the structure on the highway for a period of time. On such occasions there would be no compensation for loss of business;
 - (b) Third party insurance will be required to be in place throughout the duration of the permission. Such insurance cover must be with a reputable company for the operation of the structure. The cover must indemnify the Copeland Borough Council against all claims for injury, damage or loss to users of the public highway, arising from the use of the highway for the permitted purpose. The minimal level of indemnity must be £5 million in respect of any one incident. The licence holder must indemnify the Council and the Cumbria County Council against the loss or damage to any of their property or any loss, or injury, which arises out of the granting of the licence.
 - (c) The Council is empowered to remove and store or dispose of furniture from the highway, at the cost of the licensee, if it is left there outside the permitted hours, or should any conditions of the licence be ignored. The Council will not be responsible for its

safekeeping. The permitted hours shall be between 9.00 am to 9.00 pm each day.

- (d) An unimpeded pedestrian route must be maintained at all times for people wishing to use the footway.
- (e) Emergency routes to the premises and adjacent buildings must not be obstructed by the structures placed on the highway, which should not, in normal circumstances, extend beyond the width of the premises frontage.
- (f) Tables and chairs should be of type approved by the Council and should be kept in a good state of repair. Furniture should be placed so as not to obstruct driver sightlines, or road traffic signs. Placement of café tables and chairs must allow pedestrians to use the footway parallel to the frontage of the premises. Care should be taken in the use of hanging baskets, awnings, protruding umbrellas etc. patio heaters must not be used.
- (g) All potential obstructions must be removed from the public highway when the premises are closed to prevent a safety hazard to pedestrians, particularly during the hours of darkness.
- (h) The licensee should ensure that the structure operates in a safe manner, thereby ensuring that any safety risk or nuisance to other users of the public highway is minimised.
- (i) The placing of the structures must not interfere with highway drainage arrangements.
- (j) Any proposals to provide additional lighting to the area where the structures are placed must be discussed and approved by the Cumbria County Council.
- (k) All detritus (food and drink remnants, bottles, cans, wrappers etc) must be regularly removed from the footway surface to reduce hazards to pedestrians. The highway is to be washed down at the completion of each day's usage.
- (l) Any costs incurred as a result of damage to the highway, due to the positioning of tables and chairs etc, will be recovered in full from the licensee by the Council.
- (m) The licensee is responsible for ensuring that the conditions of this licence and planning permission are adhered to.
- (n) The licence must be displayed on the premises with a plan of the agreed layout of the structures.

- (o) The licensee shall produce the Licence on demand when so required by a police officer, fire & rescue services officer or a duly authorised officer of the Council.
- (p) The licensee shall return the Licence to the offices of the Council immediately on revocation of this Licence.
- (q) The licensee shall ensure that customers who purchase food or drink for consumption on the premises shall not consume such items outside of the permitted area.
- (r) The licensee shall ensure that all drinking glasses in which drinks are served shall be of strengthened glass and that no drink shall be served in a glass bottle from which it is intended or likely that a customer will drink.
- (s) The licensee shall ensure that adequate supervision by means of a waiter/waitress service is provided over the permitted area during the times of operation in order to comply fully with these conditions.
- (t) The licensee shall not use or suffer or permit any music playing, music reproduction or sound amplification apparatus or any musical instruments, radio or television receiving sets whilst exercising privileges granted by this permission.
- (u) The licensee shall not allow any activity or behaviour or otherwise do or permit anything to be done which causes or is likely to cause any nuisance or annoyance to nearby residents/businesses during the permitted hours.
- (v) The licensee shall comply with and obtain all other necessary statutory consents and approvals required in connection with the exercise of a refreshment facility on the said highway and comply with the provisions of all such consents and approvals and all statutes and other obligations imposed by law with regards to the provision, maintenance and operation of the refreshment facility.
- (w) The licensee shall not assign underlet or part with any interest or possession given by this permission or any part thereof but the holder(s) may surrender it at any time.
- (x) The licensee shall observe and comply with any directions in relation to the use of the highway given by the Council.
- (y) The licensee shall provide litter bins or similar receptacles for the deposit of cartons, wrappers, containers and similar discarded items if required by the Head of Leisure and

Environmental Services and ensure that the same are emptied daily.

- (z) Nothing herein contained shall be construed as the granting or purported granting by the Council of any tenancy under the Landlord and Tenant Act, 1954 or any permission under the Town and Country Planning Act 1990 or any statutory modification or re-enactment thereof for the time being in force.

6.2 In addition to the above conditions the Council reserves the right to attach any other conditions as are appropriate for the promotion of the licensing objectives or to deal with issues arising out of the consultation. This will include any requirements stipulated by the Cumbria County Council in respect of guardrails, barriers or any other means of enclosure.

6.3 The permission will last for two years. The Council can revoke the permission within that period if there is any breach of the conditions attached to the permission, the area the subject of the permission is required for other use, or the Council adopts a cumulative effect policy referred to in clause 4.7 of the Statement.

7.0 CONSULTATION ON POLICY

7.1 Prior to adopting this policy the Council consulted with the following bodies:

- (a) the Cumbria County Council as highway authority and planning authority;
- (b) the Head of Regeneration at Copeland Borough Council responsible for planning issues;
- (c) the Head of Environmental and Leisure Services at Copeland Borough Council responsible for environmental and street scene issues;
- (d) the Cumbria Constabulary;
- (e) the Cumbria Fire Service;
- (f) Copeland Disability Forum;
- (g) the relevant Portfolio Holders at Copeland Borough Council;
- (h) the West Cumbria Crime and Disorder Reduction Partnership;
- (i) Whitehaven Chamber of Trades;
- (j) Whitehaven Harbour Commissioners;
- (k) Millom, Egremont & Cleator Moor Town Council;
- (l) W3M Trading Limited;
- (m) Lake District National Park Authority;
- (n) Cumbria Health & Safety Liaison Group; and
- (o) Health & Safety Executive

Dated this 2006

Approved by the Council's Taxi & General Licensing Panel on 14th September 2006.

Approved by the Council's Executive on []

Terms of reference approved by the Council on []

SCHEDULE 1
Form of Application



www.copelandbc.gov.uk

Copeland Borough Council

APPLICATION TO PLACE STRUCTURES ON THE PUBLIC HIGHWAY

S 115E OF THE HIGHWAYS ACT 1980

Part A Particulars of Applicant

Title (Mr/Mrs/Ms/Miss etc)	
Surname	First Names
Address	
.....	
.....	
Postcode	Telephone No

Part B Particulars of Premises

Premises Name	(where applicable)
Address	Owners Name
.....	Address
.....
Postcode	Postcode
Telephone No	Telephone No

Part C Type of Structures

Type	Quantity
(e.g. tables, chairs, barriers, umbrellas) ...	(Number/size of tables, chairs etc)
Style	colour
(include make & materials)	
Details	
.....	

Part D Time & Duration

Please give details (e.g. manufacturer's brochures etc) if relevant

Please state times of day, days of week when you propose to place your structures (within the prescribed times – see condition 6.1 (c) in the policy)

Times of day Days of week

Other Details

.....

(please state any other details that you feel may be relevant in support of your application).

Part E Location Plan

Please sketch below a plan indicating the AREA on the highway in which the structures would be placed, relating to your premises, and the position of any street furniture such as lamp columns, sign posts, bollard etc. It would be helpful if you could show dimensions wherever possible.

Part F Layout

Sketch a plan showing the layout of the structures within the area indicated in Part E above.

Measurements should not exceed the length of frontage of the premises and should allow the minimum measurement specified in paragraph 4.5 of the policy.

	Yes	No
Does the premises have toilets accessible to public?	<input type="checkbox"/>	<input type="checkbox"/>
Does the premises have toilets accessible to people who are disabled?	<input type="checkbox"/>	<input type="checkbox"/>

Part G Signature

I hereby declare that all the information given by me on this form is true to the best of my knowledge.

I enclose the following:	Public Liability Insurance	<input type="checkbox"/>
(please tick box)	Liquor Licence	<input type="checkbox"/>
	(including any conditions/undertakings)	
Copeland Borough Council Fee of £130.00 (£80.00 for A Boards)		<input type="checkbox"/>
Cumbria County Council Fee of £20.00		<input type="checkbox"/>

Signature Date