



A POLICY FOR

THE LOCATION AND LICENSING OF  
TABLES AND CHAIRS ON THE  
PUBLIC HIGHWAY

Highway Activities Enforcement Team April 2009

## INTRODUCTION

- 1.01 **The Policy** - This policy sets out the processes to be considered when applying for consents to place street furniture on the public highway. It is intended to act as a guide to applicants to explain why there is a need to control and manage items placed on the highway, the issues to be considered and the conditions that will be applied upon successful application.
- 1.02 **Common law** – Common law has established that a highway is a route which all persons can use to pass and repass along as often and whenever they wish without hindrance and without charge. This definition therefore includes the road or carriageway and the footway or pavement. In order to preserve these rights of way it is necessary to ensure that they are not obstructed either wilfully or without due consideration. Consequently there is an obligation to regulate features placed on the highway to minimise risk and to make sure that there are no severe hazards particularly for the visually impaired, for those with mobility problems, the elderly and those with young children.
- 1.03 **Responsibilities** - In the County of Kent, this obligation rests with the Kent County Council (KCC), as Highway Authority, and the owners of any features or structures placed on the highway. The KCC is responsible for the fabric of the highway and therefore must ensure that, for example, access is maintained, that furniture does not obstruct drainage, sight lines or road traffic signs and that the area is safe. These are assessed and safeguarded using Highways Act powers.
- 1.04 **Café Culture** - KCC wish to encourage the provision of amenities on the highway where they are consistent with the protection of the public and where they will not be disruptive. KCC is very keen to stimulate a 'café culture' to improve the town centre areas in a general move towards a vibrant 21<sup>st</sup> century environment where external 'pavement' dining using furniture placed on highway and public land can be a vital part of the life and character of the area.
- 1.05 **Powers** - Although, both KCC and local district/borough authorities have permissive powers to allow the highway to be occupied by certain items of street furniture such as benches and bus shelters, private sector traders have no such powers to place features on the highway. However, both authorities have under the Highways Act 1980 the powers to grant consents, (licences), to others to carry out street trading activities for amenity purposes and thus legitimise the placing of private sector features such as tables and chairs on the highway. The powers also exist to remove furniture in respect of unauthorised street trading under the same Act and the Town Police Clauses Act 1847.
- 1.06 **When can tables and chairs be placed** - An applicant is **not** in a position to place any street furniture on the highway until all the required approvals have been granted as necessary. In addition, not until evidence of public liability insurance has been provided and checked and the licence is on public display within the body of the business as specified.
- 1.07 **Forecourt Trading** – If tables and chairs are to be used on private forecourts applicants need to ensure that planning permission is not required for tables

and chairs in this area. Where there is an established right of way over a forecourt and is therefore deemed to be highway

## **CRITERIA TO BE CONSIDERED BY APPLICANT**

- 2.01 **Issues to consider** - Prior to presenting any application consideration must be given to the following which will be taken into account as part of any formal assessment.
- 2.02 **Space** – Is there enough room for the use as proposed? An unobstructed footway width of 2.00m will normally be required for the unimpeded use of pedestrians. This allows wheelchairs and prams to pass and provides an adequate route for blind and partially sighted pedestrians. A greater width will be required in heavily trafficked locations. A distance of .75m from the face of the building is required to satisfactorily accommodate a seated customer on a chair. Tables and chairs should normally be placed adjacent to the premises at the back of the footway. In some large communal areas this requirement may be waived. The positioning of tables and chairs should never discourage pedestrians from using the footway. The available route past the café area must be straight, obvious and unobstructed. The through route must not meander between the tables and chairs or standing customers.
- 2.03 **Means of enclosure** – How will the licensed area be physically defined? The extent of the area may be formally identified by markers flush with the surface as permanent points of reference. When a street café is operational a temporary form of enclosure will normally be required with adequate openings to permit access. The intention of the enclosure is to demarcate and contain the area and to give a clear warning particularly to people with visual impairments. A low level tapping rail will be a necessary requirement. The means of enclosure must be lightweight for out of hours storage but sufficiently robust to cope with resistance to winds, especially near seafront and exposed areas. Rope or chain barriers are not considered suitable because they are potentially hazardous to pedestrians specifically the visually impaired. Portable planters may be considered but they must be well maintained, planted, kept clean of debris such as litter and cigarette stubs and be able to resist accidental or mischievous movement. Enclosures should have a minimum top rail height of 800mm but no more than 1000mm.
- 2.04 **Furniture** – Are the tables and chairs fit for commercial purposes? A standard Countywide design and colour scheme will not be imposed however, the Authority will insist upon a reasonable quality and expect the style to harmonise with the local environment. In some areas further conditions as to the fabric or colour of the furniture may be imposed, especially in areas of special interest or local conservation areas. Domestic plastic patio furniture will not be acceptable. Furniture must therefore be safe and intended for commercial use. It must be properly maintained, replaced as necessary and kept clean. Furniture must not be mixed. Furniture must not damage the surface of the highway and should not generate unreasonable noise when being moved at night. Consequently consideration should be given to using furniture with rubber feet. Materials and colours should not be too bright, garish or overly reflective.
- 2.05 **Umbrellas/Parasols** – Umbrella location, colour and material must be specified. They shall be positioned so that they do not overhang beyond the

enclosure and weighted to prevent them being dislodged by the wind. Only the company name or logo may be permitted on umbrellas but these should not be too dominant and limited to about 450mm x 150mm. In communal street café trading areas each business should select a different colour fabric to enable the customer to identify the seating area with the licence holders business.

- 2.06 **Storage** – Where will the furniture, umbrellas and other items be stored? Café furniture and other items will not be stored on the public highway when not in use e.g. during inclement weather. All furniture, umbrellas and enclosures etc shall be removed at night and stored inside the shop premises or within an alternative safe environment as agreed by the KCC.
- 2.07 **Cleanliness** – All tables must be cleared of all uneaten food, used crockery, cutlery and properly cleaned immediately. In areas where seagulls or birds may be a potential nuisance umbrellas may be required. The applicant is responsible for the cleanliness of the café area at all times, also for wind blown litter in the area around the outside of the enclosure. At least one litterbin should be available at all times of operation. If smoking is permitted and complies with relevant legislation, each table should be provided with an ashtray which is cleaned each time the table is cleaned. At the end of each day all discarded cigarette stubs must be cleared. If the site is not kept clean the work may be undertaken by KCC or its nominated contractor and recharged to the licence holder.
- 2.08 **Trade refuse** – The licence holder will not deposit trade refuse on the highway or part of the highway to which the permission relates except where it is consistent with arrangements already made by the local authority (district/borough council) for the collection of trade refuse.
- 2.09 **Environment/nuisance** –The quality of the air and the immediate environment should be suitable for the proposed use and the proposed activities must not constitute a nuisance. The area must be conducive to sitting/eating/drinking and therefore consideration should be given to traffic volume, bus stops, taxi ranks and fumes. It is recommended that the hours of operation will depend on the location, facilities available and Police guidance. Normally, it would be expected that any business be concluded on the highway by 11pm. External public address systems and amplified music will not be allowed within the licensed table and chair area. The permission holder must not cause annoyance to persons using the highway or part of the highway to which the application relates.
- 2.10 **Pedestrians/deliveries** – When in use, the pavement area will need to be clearly delineated. It is important to make the area distinguishable to other footway users and to assist the visually impaired. The means to accommodate deliveries and access for Emergency Service needs shall be considered.
- 2.11 **Neighbours** – Will the proposal affect neighbouring businesses and residents? It is good practice to always consult with neighbours, tenants and adjacent residents and to submit evidence to show that they have been consulted and present any letters of support. By giving those fronting the site or those who may materially be affected the opportunity to comment it may be possible to address any concerns prior to a formal submission. As part of the administration of the Highway Licence, there are two legal consultative

requirements. These are to seek the consent of interested frontagers close to the property and to accept representations up to 28 days after a public notice has been posted on or near the premises.

- 2.12 **Regulations** - Does the proposal to place table and chairs meet with the criteria and aspirations outlined in this policy? The use of the area may involve a number of approvals it is important to secure the appropriate approvals and have a clear understanding about the obligations and conditions that apply in respect of each approval/licence and what is covered.
- 2.13 **Public liability insurance** – Is insurance cover required? The persons to whom permissions are granted must always have valid public liability insurance for at least £5,000,000 which also indemnifies the KCC its agents, servants and workmen against any costs, claims, expenses, actions or damages arising.. **Evidence of such public liability insurance shall be provided to the satisfaction of the KCC respectively before permissions can be exercised.**
- 2.14 **Fees and charges** – Are fees and charges due? Fees will be payable within the provisions of the fees scale determined by the KCC relevant to the period for which the application/consents relate/s.

## Site Specifics

- 3.01 **Pedestrianised streets with vehicle access at times** – Placing of tables and chairs will normally not be permitted during the hours of vehicular access. Vehicles and tables and chairs will only be allowed at the same time in such streets if adequate, clearly defined pedestrian space remains. Even during the hours when vehicles are normally excluded, tables and chairs should occupy only the area delineated in order to ensure a free and unobstructed route for Emergency Service vehicles.
- 3.02 **Pedestrianised streets with vehicle access at times/street markets** – Placing of tables and chairs will normally not be permitted during the hours of vehicular access. When a street market is active, tables and chairs will not be permitted unless there is sufficient space to accommodate passing pedestrians, shoppers, the stalls and stock and access is available for Emergency Service vehicles.
- 3.03 **Special areas and events** – There may be some sites where, as part of public projects or events, a share or all of the licensed trading area may be required to accommodate the proceedings. The licence holder will vacate the 'events' area for the period concerned. Alternative arrangements for tables and chairs on the highway may be considered but cannot be guaranteed. Due notice of a forth coming event will be given. There may also be situations where high pedestrian or traffic flow may influence the placing of tables and chairs and the licence holder may be required to reduce the size of the enclosure or vacate the site. All situations will be assessed as necessary but additional conditions may need to be imposed as appropriate.
- 3.04 **Communal areas** – There may be some sites where an area of highway/public land is divided into predetermined trading areas available for different business to attract custom. Specific additional conditions may apply

in these situations but this policy, the terms and conditions identified herein will always apply.

## **Conditions**

- 4.01 The applicant shall display a complete copy of all the licence in the front window at or near to the place to which the consent/s is/are applicable throughout the period of consent/s.
- 4.02 Nothing in this consent shall absolve the applicant from prosecution should the application area be used in any other way than consented to or if any use expands beyond the application area.
- 4.03 Access for Emergency Services will be allowed at all times.
- 4.04 With the exception of planning permissions and listed building consents, the consent/s may be withdrawn, at no cost to the authority involved at any time during the period of consent if complaints are received, conditions alter or if full compliance of all conditions is not achieved. Unless there is an immediate urgent problem, the applicant will be served with up to two written notices/warnings to comply. A failure to still comply will result in a third communication indicating that action will be taken. Applicants should note that consents last for one year and therefore require renewal.

## **PROCEDURES**

- 5.01 For a licence on the highway, first contact Kent Highway Services, at the address given to establish if the principle would be acceptable
- 5.02 If an indication is given that the submission is satisfactory the applicant should then make contact with the relevant Planning Officers within the local district/borough authority to make arrangements to submit a planning application as necessary to cover all the relevant aspects of the proposal as outlined in this policy.
- 5.03 The applicant should contact the District/Borough Councils Licensing Department to determine if approval is needed to trade on street and to make the appropriate application where necessary. The applicant should also contact this department if a liquor licence or extension will be required.
- 5.04 The applicant should contact the District/Borough Council's Environmental Health Department to discuss any issues relating to noise, food health and safety and litter.
- 5.05 The applicant should contact the Kent Highway Services appropriate Roadworks Team for an application form which should be completed and returned along with all the relevant necessary documentation. To ensure that the application is processed quickly, applicants should have considered all the points listed in the 'checklist' and supply all the relevant supporting data.

5.06 It may take up to three months to process all aspects of the application which takes into consideration all representations made by interested frontagers who would be materially affected by the proposal. Consultation may include the local Superintendent of Police. Local authority planning, listed building and advertisement consents take approximately eight weeks to administer. Liquor licences are not administered until after planning permission is granted.

6.01 **The following general points should be considered:**

- Is it likely that the KCC will agree to a request in principle
- Are there any doubts about land ownership
- Are there any doubts about rights of way
- Are there any existing related planning consents
- Is the local environment suitable
- Are other frontagers likely to object
- Is the site a 'communal area'
- Is the site linked to any prohibitions of vehicular traffic
- Is the site linked to street markets or special events
- Will accessibility be preserved on the footway and within the site
- How will the area be delineated
- Is there sufficient space to accommodate customers and furniture
- Will the furniture be fit for its intended purpose
- Will umbrellas be provided
- How will items be stored
- Can cleanliness standards be achieved and maintained
- How will trade refuse be removed in relation to the street café

6.02 The application should be accompanied by the following;

- A location plan 1:1250 which clearly defines the premises
- A plan 1:50 or larger to show:  
  
The proposed licensed area outlined in red in relation to the premises and kerb line with dimensions

The precise location of the tables and chairs, umbrellas, litter bins and means of enclosure

The position of any street furniture and trees in the immediate vicinity

The position of any dropped kerbs, pedestrian crossings, parking bays, market pitches, cellar hatches, points of access, fire escapes

- A photograph or brochure detailing the furniture to be used
- A photograph or brochure detailing any means of enclosure
- Details of the proposed hours and days of the week that will apply
- Details of the proposed place of storage
- A completed Indemnity Agreement
- Copies of any necessary local authority (district/borough) permissions such as planning, licensing etc. or written confirmation that these permissions will not be required.



## REFERENCES

Highways Act 1980, Section 115A – 115H

Highways Act 1980, Section 147A & 149

Control of Pollution Act 1974

Environmental Protection Act 1990

The Disability Discrimination Act 1995

Town Police Clauses Act 1847

Town and Country Planning Act 1990 (as amended)

Town and Country Planning (Control of Advertisements) Regulations 1992 (as amended)

Planning (Listed Buildings and Conservation Areas) Act 1990

Local Government (Miscellaneous Provisions) Act 1982

The Licence Act 2003

The Police and Criminal Justice Act 2001

KCC – Provision of amenities on certain highways – HMRB (11/2003)