

# Gloucester City Council

<b>Meeting:</b>	<b>Licensing &amp; Enforcement Committee</b>	<b>Date:</b>	<b>14 March 2019</b>
<b>Subject:</b>	<b>Review of the policy and the Fees and Charges for the Licensing of Items to be placed on the Highway (Tables and Chairs and A-Boards)</b>		
<b>Report Of:</b>	<b>Head of Place</b>		
<b>Wards Affected:</b>	<b>All</b>		
<b>Key Decision:</b>	<b>No</b>	<b>Budget/Policy Framework:</b>	<b>No</b>
<b>Contact Officer:</b>	<b>Darren Mountford, City Centre Improvement Officer (Licensing Lead)</b>		
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<b>Appendices:</b>	<b>1: Comparative Fees from Other Councils</b>		
	<b>2: Breakdown of costs</b>		

## FOR GENERAL RELEASE

### 1.0 Purpose of Report

- 1.1 To review the current arrangements for charging to place Table and Chairs and A-Boards onto the Highway and to amend the current policy to extend the duration in which a permit is issued from one to every two years.

### 2.0 Recommendations

- 2.1 The Licensing and Enforcement Committee is asked to **RESOLVE** that:
- (1) New charges from the 1<sup>st</sup> July 2019 for the consent of Tables and Chairs and A-Boards on the Highway are approved for an 8 week consultation.
  - (2) An amendment to the current policy to issue permits from one to every two years is approved for an 8 week consultation.

### 3.0 Background and Key Issues

- 3.1 The placing of table and chairs and A-Boards on the Highway is covered under the Highways Act 1980 Section 115E. There is power in Section 115F for the Council to impose conditions attached to the consent.
- 3.2 There are currently 29 premises consented to display tables and chairs in Gloucester City and 56 consents issued for A-Boards. Businesses requiring tables and chairs and A-boards have proliferated in recent years, partly as a result of the relaxation in licence fees for tables and chairs on the highway.

- 3.3 Consents to place Tables and Chairs on the Highway are currently free, this decision was taken by Members in 2009, 2012 and 2015 where they agreed to keep these fees free of charge to encourage the Café Culture in the City, and boost the evening economy. The cost to place an A-board onto the Highway is currently £50.
- 3.4 The Team have received a number of complaints (7 this year) relating to the positioning of Tables and Chairs and A-boards on the Highway, these complaints have mostly related to un-licensed items, however, on occasions licensed items have also been re-positioned in an obstructive manner. Ongoing monitoring is therefore essential to ensure compliance is maintained.
- 3.5 The Power to grant permission for the provision of services, amenities, recreation and refreshment facilities on the highway and related powers is delegated to the City Council through an Agency Agreement between Gloucestershire County Council Highways and Gloucester City Council.
- 3.6 The power to set fees for these types of licences is currently delegated to the Corporate Director. Fees charged can only be set to cover the expenses of granting the Consent by virtue of section 115F.
- 3.7 A list of comparative local authority charges can be found in Appendix 1. Members should note that fees for both Licences are not available for all Local Authorities noted on this list. Some Local Authorities administer both A' Boards and Tables and Chairs Licences in their area, however some others only permit one or the other. Furthermore, each Local Authority sets their fees differently.
- 3.8 Members at the Licensing and Enforcement Committee in December 2018 considered a report whereby Gloucester City were looking to introduce fees for the placing of Tables and Chairs and A-Boards onto the Highway. At this Committee members decided to defer a decision as they requested more information on how the fees were calculated.
- 3.9 Gloucester City currently has a policy on which it consents to there being items on the Highway. Within this policy it states that a permit will only be issued for a period of 12 months.
- 3.10 Part of the review of this policy is the proposal to change the frequency in which a permit is issued for. This would be from one to every two years. By increasing this to two years will not only help with the administration but also help reduce the cost to the applicant if the fees are approved as they will effectively only make/renew an application every two years instead of every twelve months.

#### **4.0 Asset Based Community Development (ABCD) Considerations**

- 4.1 There is a legal process within the terms of the Highways Act 1980 that we must follow.

#### **5.0 Alternative Options Considered**

- 5.1 The City Council may decide to leave the fees at the existing levels to support businesses to ensure the café culture continues. If this decision is taken, it should be mindful that the City Centre Improvement (Licensing) Service will not be

covering their full administration costs and the Council will be subsidising businesses who use items on the highway in order to generate them further income.

## 6.0 Reasons for Recommendations

- 6.1 The fees for the placing of table and chairs and an A-Board on the highway have been reviewed to reflect the cost of administering the licences and monitoring compliance of those items. The Current fee levels do not cover the cost of this service.
- 6.2 However, in order that members make this decision based on all of the facts available to them, the costs of administering and granting these Highway Licences have been estimated below.

<b>Application Type</b>	<b>Tables and Chairs</b>	<b>A-Boards</b>
<b>New</b>	£288	£288
<b>Renewal</b>	£135	£135
<b>Copy of Licence</b>	£17	£17
<b>Refundable fee where applications is refused</b>	£60.50	£60.50

The addition of the refundable fee above, reflects the average cost of monitoring compliance and responding to complaints, which is not required if the licence is not granted. This ensures that the Council can cover the minimum cost of processing each application even if the licence is later refused. The breakdown on how the fees have been calculated can be seen in Appendix 2.

- 6.3 The proposed fees are also more consistent with the City Council's licensing fees for Tables and Chairs on City Council land, as set by Asset Management. A number of property licences have been issued to businesses in Kings Square and the Docks costing on average £350 for Table and Chairs. A fee for an A-Board is currently not being charged for.
- 6.4 For members ease. The Asset Management Department at Gloucester City Council are responsible for issuing property licences for tables and chairs on land owned by the City Council. This includes Kings Square and parts of the Docks. The City Centre Improvement Team is responsible for issuing Consents to tables and chairs and A-Boards on land that is classed as a highway. If someone wants to place an item on private land then they do not need to seek permission from the City Council unless it requires planning/advertisement consent.
- 6.5 There are also issues around health and safety and visual amenity especially in high footfall areas such as the City Centre where the proliferation of A-Boards and table/chairs is becoming to look unsightly and becoming an impediment to partially sighted and other individuals.

## **7.0 Future Work and Conclusions**

- 7.1 It is intended to review the policies for Consenting items on the Highway routinely every 3 years. The fees will be reviewed on an annual basis, to consider changes in service and uptake of these licences.
- 7.2 This is an area of Licensing that needs resolving as the service continues to receive complaints about such items obstructing the highway and we continue to discover a number of unlicensed premises placing tables and chairs and A-Boards on the Highway. It is important for the City to present as attractive a face as possible to residents and visitors alike.
- 7.3 Members are recommended to accept the proposed changes to the current levels of fees for Tables and Chairs and A-Boards in accordance with the proposed fees listed in Paragraph 6.2 and to amend the current policy to extend the duration in which a permit is issued from one to every two years and approve for an 8 week consultation on the proposal to take effect on 1<sup>st</sup> July 2019.

## **8.0 Financial Implications**

- 8.1 The fee levels currently set do not cover the work carried out by the service and the proposed fee will contribute to the costs of delivering this service.

(Financial Services have been consulted in the preparation this report.)

## **9.0 Legal Implications**

- 9.1 Sections 115A to 115K of the Highways Act 1980 are quite complex. They were introduced into the Act by virtue of the Local Government (Miscellaneous Provisions) Act 1982, the same legislation that introduced Street Trading. This is only a summary and the actual provisions must be referred to.
- 9.2 For tables and chairs on the highway, the specific power is contained in section 115C, the provision of refreshments by the Council that can be granted to other persons under 115E.
- 9.3 For “A” boards on the highway, it is arguable that the powers come under section 115B, the provision of services and amenities by the Council that can be granted to other persons under section 115E.
- 9.4 The permission granted for either “A” boards or tables and chairs to be in the highway are termed “consents” rather than “licences” under the Highways Act 1980 sections 115A to 115K.
- 9.5 Where the Council grant consent and it is not complied with, then the Council may carry out work in default of a statutory notice and if correction is not possible then revocation and removal may be the remedy.
- 9.6 The City Council has express permission to utilise sections 115A to 115K under a Mini Highways Agreement with Gloucestershire County Council.

- 9.7 Where tables and chairs and “A” boards are put on the highway without consent, there are various enforcement powers in the Highways Act 1980.
- 9.8 Local Authorities are able to impose fees for the grant or renewal of licences/permits covering their administration and enforcement costs.
- 9.9 This was backed up by the Supreme Court’s decision in the Hemming v Westminster case. They ruled that Licensing Authorities are able to include the cost of enforcement when setting their fees and not just the administration cost of granting a licence/permit.

(One Legal have been consulted in the preparation this report.)

## **10.0 Risk & Opportunity Management Implications**

- 10.1 The key risks arising from this relate to decisions taken by the Licensing and Enforcement Committee. Any decisions made which are unreasonable or unlawful could be open to legal challenge resulting in loss of image, reputation and potential financial penalty.
- 10.2 There is an opportunity to ensure a consistent approach for the City is taken in terms of Consenting table and chairs and A-Boards onto the highway. Whilst the City Council’s Asset Management Team has regard for our policies for consenting Table and Chairs, it does not share the same charging structure.

## **11.0 People Impact Assessment (PIA):**

- 11.1 The following matters have been considered during the screening stage, impacts on Disability groups including those with mobility difficulties, partially sighted and blind a positive impact has been identified. Furthermore, wheelchair and mobility scooter users have been considered along with mothers pushing double pushchairs in considering minimum access routes and maximum dimensions of various items on the Highway.
- 11.2 The PIA Screening Stage was completed and did not identify any potential or actual negative impact; there a full PIA was not required.

## **12.0 Other Corporate Implications**

### Community Safety

- 12.1 The Policies for Licensing Items on the Highway take into account community safety ensuring that an unobstructed access route is maintained on the highway at all times and for all members of the Community.

### Sustainability

- 12.2 None

### Staffing & Trade Union

- 12.3 None

Press Release drafted/approved

12.4 None

**Background Documents:**

The Highways Act 1980 as amended by the Local Government (miscellaneous Provisions) Act 1982

Mini Agency Agreement between the County Council and City Council