

REGENERATION, COMMUNITY AND CULTURE OVERVIEW AND SCRUTINY COMMITTEE

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STREET LICENCING – PLACING OBJECTS ON THE HIGHWAY

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Summary

The report sets out proposals for an all inclusive policy for dealing with shop front displays, tables and chairs and A-boards on the highway, to ensure parity amongst traders and the public.

Following agreement from Cabinet in November 2015, a draft policy was consulted on. A draft policy document is attached (appendix 2). The intention is for Cabinet to adopt the policy in full in March 2016 and then for a 12 month trial to take place in Chatham Town Centre from June 2016. A review will follow to inform a final policy document that can be implemented throughout Medway.

1 Budget and Policy Framework

- 1.1 Officers would propose charging a reasonable fee for the licences. This charge would need to be added to the schedule of fees and charges and would therefore need the approval of Full Council.
- 1.2 Implementing the policy would be in keeping with the key priorities listed in The Council Plan 2013-15; 'Safe, Clean and Green Medway' and 'Customers at the centre of everything that we do'. In addition the Policy also supports Priority 2- *Improving The Local Street Scene*, in the Community Safety Plan 2013-16.
- 1.3 Through the regulation of the parameters in which traders can operate, the Council could ensure that safety criteria from the emergency services is adhered to, along with crucial day to day health and safety regulations. The public are recognised at the forefront of this policy, with improved access to the High Street for all residents, while improving the quality and aesthetics of displays. Whilst approval of the Policy will be a matter for Cabinet, approval of fees and charges and the delegation of relevant functions to officers are a matter for Full Council.

- 1.4 Currently there is confusion on the extent to which traders can use the highways for their businesses. This has manifested itself in numerous complaints from the public, retailers and traders.

2. Background

- 2.1. Chatham High Street has been chosen as the pilot area for the new policy. The number of unregulated businesses operating on Chatham High Street has significantly increased in recent years. Currently 45 businesses use the highways as an extension of their trade, resulting in unregulated tables, chairs and shop front displays being placed on the High Street. In addition there are currently 87 unregulated A-boards.

2.2 Key Objectives:

- Promote parity and uniform standards, ensuring equity, across traders, cafes and restaurants. This will consequently improve the quality of displays, while promoting the safety of pedestrians and ensuring compliance with the regulations from the emergency services.
- Present a solution that has minimal cost to businesses and is cost neutral in terms of resources needed to implement the policy.
- Deliver an option that is acceptable and enforceable.

2.3 The Proposal:

- 2.3.1 The licensing of the highway, will enhance the aesthetics of the public realm, promoting quality and reinforce necessary safety measures. In addition a clear policy will give traders clear guidance over what is acceptable or unacceptable; this should address the complaints and enquiries received from traders and the public enabling the council to enforce with parity where appropriate. There will be an application process and a fee.
- 2.3.2 In relation to A-boards, there will be a clear criteria which will enable officers to enforce policy more effectively when necessary. Traders contravening the A-board policy will be given the benefit of the doubt in the first instance and will be made aware of the policy with a deadline to rectify the contravention. If, at a later date the same trader is still contravening the policy they will be charged £40 per enforcement visit.
- 2.3.3 The highways licensing will be a one-year pilot scheme in Chatham High Street which will begin in June 2016. The area intended to trial the proposal will encompass Holborn Lane to the intersection between the High Street and Brook Road; this area will also include some side streets (see map attached, Appendix 1). At the end of the year, the pilot scheme will be reassessed and reviewed; amendments can be made along with proposals to expand this scheme on a larger scale to the rest of Medway.

2.3.4 With approximately 45 businesses operating on the highways adjacent to their shop / restaurant, it is essential that these businesses comply with the safety and quality criteria established in the proposed licence agreement

2.3.5 To ensure the sustainability of the legislation, administrative and enforcement costs should be absorbed, as much as possible, by those businesses using the highways. Table 1 depicts costs that will be passed onto traders. Section 115F of the Highways Act allows a Council to impose conditions, including requiring payment, for the granting of permission to place structures on a highway.

2.3.6 Unless the Council is the owner of the subsoil beneath the highway in question (which it is understood we are not), these charges may not exceed the 'standard amount'. In this case this means those charges, 'will reimburse the council their reasonable expenses in connection with granting the permission'. As such, making a profit from this policy is not possible and the charge proposed will only cover the costs incurred by the Council for managing this policy.

2.4 Costs/ resources needed:

The non-refundable £162 fee charged upon application will allow this policy to be cost neutral for the Council, funding the necessary resources to implement and enforce the policy.

2.5 Proposed Licensing Fees:

Table 1

	<i>Per annum licence Fee (£)</i>	<i>Enforcement fee (£)*</i>
Shop Front Displays & Booths	162	40
Tables & Chairs	162	40

* A charge of £40 will be incurred per call out in the event of a trader not abiding to their licence agreement or the Council's policy, after an initial warning/visit. Full proposed Terms and Conditions are outlined in Appendix 2.

2.6 Timescales:

- Submit for final approval from Cabinet; **8 March 2016**.
- Seek authority at Full Council to set the relevant fees and charges, stated in the licensing document; **28 April 2016**
- Application assessment/processing; **4 weeks from 1st June 2016**
- Expected all applications received, assessed and enforcement **by July 2016**.

By July 2016 Officers would be able to determine the traders who are not adhering to the new licensing policy, and would exercise appropriate enforcement powers.

3. Options

1. **Proposal in its entirety.**

This option provides the best balance of providing parity for traders and the public, while providing a safe environment within Chatham's Town Centres.

Or

2. **Principles of proposal but with reduced charges to traders.**

This would not be viable to the Council, as the policy would no longer be cost neutral, given the resources needed to implement and enforce the policy. In addition, this fee reflects the existing policy in neighbouring Kent County Council.

Or

3. **Do nothing and leave tables and chairs policy as it is, without further regulations.**

This would exasperate the current issues and conditions, which would be unacceptable to both traders and the public.

4. Advice and analysis

4.1 The proposed fee for shop front displays and tables and chairs being placed on the highways, has been carefully calculated to ensure;

a) Clarity for traders, with uniform fees for both shop front displays and tables and chairs, the application process will be straightforward.

b) Fees are in line with Kent County Council (KCC) who charge a non-refundable £162 upon application.

c) The income from these fees will pay for the administration of the licence as there is insufficient funding available to cover these costs. The selected fees would provide a cost neutral option to the Council, thereby ensuring the sustainability of the policy. Should this policy be considered for implementation in other town centres then a re-evaluation of Council resources will be required, to ensure continued sustainability.

d) The safety of pedestrians; there is a need to regulate items placed on highways in order to improve access to the High Street. This will help ensure that the Council meets its equality commitments and the Equality Act obligations.

- 4.2 The rationale for the regulation of A-boards is to ensure that safety criteria are adhered. No charge will be incurred. KCC currently has this process in place, in order to act in the interest of traders and pedestrians. Traders contravening the A-board policy will be given the benefit of the doubt in the first instance and will be made aware of the policy with a deadline to rectify the contravention. If at a later date the same Trader is still contravening the policy they will be charged £40 per enforcement visit.
- 4.3 The findings from the Diversity Impact Assessment suggest that the licensing would have a positive impact for all members of the public. The licensing would ensure that Chatham High Street has continuity, with a limit imposed to prevent traders' stands straying past the rain gutters. The pavement will therefore have a designated safe area, for those with mobility disabilities or visual impairments, which will be free from any obstructions.

5. Risk management

Table 2

Risk	Description	Action to avoid or mitigate risk	Risk rating
▪ Lack of internal resources to deliver	Potentially additional cost to the Council. In the initial phase 45 applications may be submitted.	In order to ensure the licensing is cost neutral to the Council, traders will incur charges to pay for additional resources.	C2
▪ Unpopular with some traders	Delivering this could be an issue with potential trader backlash, in response to a new process with new cost implications.	There is a clear public demand for a higher quality and safer environment on Medway's high streets manifested through a high number of complaints. Subsequently there is an expectation for the Council to provide a solution. This demand/expectation can be used to counterbalance any issues with traders who object to the policy and it's enforcement.	C2
▪ Online application process is unclear and difficult.	The application process is dependent upon the online system working smoothly. There is a risk of insufficient clarity and teething problems with a new system.	Consultation with relevant Council Officers to ensure the website is user friendly and clear. Closely monitor the initial 8-week period of applications on the web page and improve/intervene as necessary.	D3

6. Consultation

- 6.1 Town Centre Managers have received multiple complaints over a significant period of time from both traders and members of the public, concerning the expansion of trade onto the highways, causing obstructions to the public and posing safety risks.
- 6.2 This report reflects the outcome of consultation with key officers, traders, residents and disability groups who could be affected by the implementation of the licensing. Since the initial policy was considered by Cabinet, some aspects have been altered to reflect this consultation.
- 6.3 A public consultation exercise was undertaken throughout November 2015. We received 115 responses both online and on paper; 35 from traders and 75 from residents. Comments were also received from Medway Labour Group and the Guide Dogs for the Blind association. A meeting also took place with the Chatham Town Centre Forum to discuss the draft policy. Overall they were in favour of the uniformity being enforced.
- 6.4 A summary of the key findings were:
- 84.11% of responders agreed it would be safer for pedestrians to use the high street if there were guidelines set out to help shops lay out their pieces of furniture
 - 79.62% of respondents agreed that shops should be assessed against the same criteria for additional shop furniture
 - 86.92% were in favour of some uniformity in relation to how shops displayed extra pieces of furniture on the highway. There was a key message back that responders did not mind displays on the highway as long as they were within controlled, defined parameters.
- 6.5 Following the public consultation exercise, a number of items were raised that need to be investigated and reflected in the final policy document before it is considered by Cabinet on the 8 March 2016.
- Review National guidance on highway clearing of 2.0m compared to the 1.8m Medway are considering.
 - Consider the option of studs to delineate the extent of boundary.
 - Need to ensure the policy is clear with an explanation on using the rain gutter back towards the shop frontage to keep uniformity.
 - Ensure that freestanding items are 1.0m high to qualify but not exceed 1.6m high.
 - Ensure the policy reflects the fact that A boards need to be against shop frontage.

7. Financial implications

- 7.1 The proposed fee of £162 will enable the policy to be cost neutral. Enforcement will charge £40 per call out in the event of a shop trader not abiding to their licence agreement or the Council's policy, after an initial warning/visit.

8. Legal implications

- 8.1 It is a statutory duty of the Council to prevent obstructions on the highways, under Section of the 130 Highways Act 1980. However, there is an express provision in section 115A-K Highways Act 1980 that gives the Council power to license certain installations (including tables and chairs) that would otherwise constitute an obstruction.
- 8.2 The decision to adopt a policy will be a decision for Cabinet. The policies would then be subject of consultation. Cabinet would consider the responses to consultation before taking a decision to adopt the policy in its final form.
- 8.3 The decision about the licence fee to be charged will be a decision for Full Council.
- 8.4 Once the policy has been adopted by Cabinet and the fees determined by Full Council, it is recommended that Full Council delegate the function of processing and determining individual applications to an officer.
- 8.5 In some cases additional permissions will be required in addition to consent under the Highways Act 1980, such as planning permission and premises licence under the Licensing Act 2003.

9. Recommendation

- 9.1 That the Overview and Scrutiny Committee take note of the policy document intended to cover the whole of Medway and the proposed pilot for Chatham Town Centre scheduled to begin June 2016 pending approval by Cabinet and full Council.

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Background papers

Disability impact Assessment
Chatham Highways policy street furniture consultation briefing note December 2015

Appendices:

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| Appendix 1 | Map illustrating positioning of A-boards, shop front displays & table and chairs on highways |
| Appendix 2 | Draft - Proposed Highways Licensing Policy |
| Appendix 3 | Diversity Impact Assessment |