

Public Document Pack

Tony Kershaw
Director of Law and Assurance

If calling please ask for:

Sally Manning on 033 022 23883
Email: sally.manning@westsussex.gov.uk

www.westsussex.gov.uk

County Hall
Chichester
West Sussex
PO19 1RQ
Switchboard
Tel no (01243) 777100



03 March 2020

Dear Member,

Environment and Communities Scrutiny Committee - Thursday, 5 March 2020

Please find enclosed the following document(s) for consideration at the meeting of the Environment and Communities Scrutiny Committee on Thursday, 5 March 2020 which was unavailable when the agenda was published.

Agenda No	Item
------------------	-------------

9.	Licensing of Tables and Chairs on the Highway (Pages 3 - 12)
-----------	---

This paper was delayed due to staff sickness.

Yours sincerely

Tony Kershaw
Director of Law and Assurance

To all members of the Environment and Communities Scrutiny Committee

This page is intentionally left blank

Environment and Communities Scrutiny Committee

5 March 2020

Licensing of Tables and Chairs on the Highway

Report by Director of Law and Assurance

Summary

The Cabinet Member for Highways and Infrastructure proposes to take a decision in March 2020 on the fee structure for the positioning of tables and chairs on the highway, following a public consultation. The proposed decision was first published in the Forward Plan in January 2020. The draft report for the proposed decision is attached.

Focus for scrutiny

The Committee is invited to consider and comment on the feedback arising from the public consultation, and the extent to which the proposed decision has been modified to address this.

The Chairman will summarise the output of the debate for consideration by the Committee.

Details

The background and context to this item for scrutiny are set out in the attached reports (listed below), including resource and risk implications, Equality, Human Rights, Social Value, Sustainability and Crime and Disorder Reduction Assessments.

Tony Kershaw

Director of Law and Assurance

Contact Officer: Ninesh Edwards: ninesh.edwards@westsussex.gov.uk

Appendices

Appendix 1: Licensing of Tables and Chairs on the Highway – Draft Decision Report

Background papers

None

This page is intentionally left blank

Cabinet Member for Highways and Infrastructure	Ref No:
March 2020	Key Decision: Yes
Licensing of Tables and Chairs on the Highway - Fees and Charges	Part I
Report by Executive Director Place Services and Director of Highways, Transport and Planning	Electoral Division(s):
<p>Summary</p> <p>In the Fees and Charges Report February 2019, it was agreed to increase the fee for a Tables and Chairs licence to £520.</p> <p>Negative feedback was received to the implementation of this fee. A significant number of those who made representations asked for a sliding scale to be considered rather than flat fee rate. A proposal has been developed and a public consultation undertaken in February 2020. Feedback from the consultation has been mixed: modest support for the sliding scale proposal, with general feedback that a charge is not welcomed. The consultation response was relatively limited despite wide publicity.</p> <p>The charge proposed is necessary to make this process self-sustaining. This is also standard practice across highway authorities.</p> <p>The sliding scale makes it fairer for small businesses to compete equitably with those with a larger frontage and occupation of the highway.</p>	
<p>West Sussex Plan: Policy Impact and Context</p> <p>This proposal is in line with the West Sussex Plan priorities, predominantly "A Strong, Safe and Sustainable place" and "A Council that works for the community".</p>	
<p>Financial Impact</p> <p>The proposed change to the charging mechanism results in the following:</p> <p>It is anticipated this should result in cost recovery. Going forward this will be reviewed as part of the County Councils annual Fees and Charges report. Once uptake is known the fee will be amended to ensure cost recovery is reflected</p> <p>By lowering the fee, more businesses who only want to have a small number of chairs outside their premises will be more receptive of the lower change and to apply for a licence, so the County Council is likely to see an increase in the number of licences.</p>	
<p>Recommendations</p> <p>The Cabinet Member considers the outcome of the consultation results and the proposed sliding scale fee for a licence for tables and chairs on the highway. Recommendation that the fee as detailed in section 2 of this report is implemented with effect from 1st April 2020.</p>	

Proposal

1. Background and Context

- 1.1 As a local authority WSCC is able to recover reasonable costs in undertaking a licensing activity. Last year the fee was increased to reflect a fair consideration of the officer time (management and administration costs) and to take account of inflation (the fee had not been increased for a number of years). When the fee was reviewed, benchmarking took place with other authorities.
- 1.2 In 2019 it was agreed to increase charges for a Tables and Chairs licence to £520 per annum. The fee was previously set at £412 for the first year, which covered the application process as well as inspection and then £200 for the annual renewal.
- 1.3 To implement the new fee, businesses were sent a letter to remind them to apply for a licence. There are currently 31 licences in place. The County Council have received more applications, however these are either in process or have been rejected on the basis that they do not meet the criteria for a licence.
- 1.4 The Implementation of this level of fee generated a significant amount of feedback as detailed in 1.5 below.
- 1.5 20 members made representations:
 - 9 requested a sliding scale to ensure equity for smaller businesses (but did not state the current top charge was too high for larger businesses), of which 1 member also proposed banding the charge based on the tier size of the settlement.
 - 5 expressed the current charge was of £520 too high.
 - 2 requested no charge.
 - 1 supported charging and recommended reviewing the charge (not specified as too high, however the author suspects this was the intention).
 - 3 members did not pass comment on the pricing structure and either passed on messages of dissatisfaction from those they represent or requested further information.
- 1.6 Other negative feedback was received from traders, and local councils/Councillors. Feedback requested/suggested that a sliding scale approach would be preferable to be equitable for smaller establishments.
- 1.7 Under the Highway Act 1980 WSCC has a duty to safely manage the public highway. Historically, WSCC operated a reactive approach when responding to antisocial/unsuitable placing of tables and chairs and other obstructions in the highway. Due to the significant increase in the number of tables and chairs on the highway and the potential risk these obstructions present to the most vulnerable highway users, it is no longer prudent for WSCC to monitor this reactively. All tables and chairs will be licensed to ensure monitoring, control and uniformity across the county.

- 1.8 It is unlawful to obstruct the highway without a licence, and it is likely to be a requirement of traders' public liability insurance. In the event of a serious injury or death, without public liability insurance being in place, litigation is likely to be levelled at two parties, namely those that caused the issue (the premises owner / manager) and the appropriate licensing authority who wilfully allowed / observed the potentially dangerous practice taking place, without ensuring the appropriate risk assessments and subsequent licence to be in place.
- 1.9 The placing of tables and chairs on the highway provides primary benefit (in terms of increased floor space and subsequent turn over) for the owners/managers of a premises. However, there is the disbenefit both to those who do not use the premises, pedestrians, and to the highway authority who must still inspect the obstructed highway and also maintain it where the increased movement of tables, chairs and customers is likely to cause increased harm to the fabric of the highway.
- 1.10 WSCC believes that tables and chairs, when placed and operated appropriately, can significantly enhance the public realm. The cost of processing, consultation, resolution, monitoring and enforcement of this activity should not be borne by the public purse.
- 1.11 Many local authorities, but not all, operate an initial application fee and a subsequent fee based on the amount of highway occupied. However, every authority is different in the way they calculate this. For example:
- Portsmouth - £127 initial processing fee. Additional charge based per square metre. This is tiered at 5 square metre intervals up to 20 square metres, when it becomes a capped single fee.
 - Brighton -£127 initial processing fee. For less than 5 square metres the fee is £360. For greater than 5 square metres, there is a per square metre charge of £25.
 - East Sussex - £260 per two years.
- 1.12 WSCC proposes
- A processing fee of £150 per application renewable every three years. This cost includes for addition officer work on checking.
 - Any changes or amendments to the licence will result in a subsequent £150 fee.
 - .
 - An annual cover charge of £20 per cover (chair) with a minimum charge of £100. A chair is normally deemed to occupy 1.4 square metres (standard restaurant calculations).
- 1.13 Charging per cover offers significant benefits:
- Premises with only a small number of covers will pay a significantly reduced amount.
 - Premises with a larger number of covers are encouraged to effectively consider how many covers they are likely to fill on a regular basis. Or pay a premium for empty chairs, which can obscure nearby smaller premises,

obstruct the highway and provide an unnecessary obstacles for the visually impaired.

- Inspectors can quickly count the covers for inspection and enforcement purposes.

1.14 It is noted that a significant amount of the responses, particularly from the public, are against any charging for the licensing of tables and chairs. However, this is a non-statutory activity. If this was not charged, any officer resources spent would be at the expense of them carrying out their statutory duties.

2. Proposal Details

2.1 To charge an application fee of £150 to administer a new licence, a variation to an existing licence or to renew a licence. This charge includes the cost of administration, processing, consideration of suitability of application, consultation and engagement/decision making.

2.2 To charge an annual fee of £20 per cover (£100 minimum charge will apply) for a licence to allow obstruction on the highway with a table(s) and chair(s). This includes for invoicing, inspection (usually monthly), enforcement and engagement. This fee would also be charged in the first year. All applications, regardless of when they apply, will run for financial year and will be renewed in April.

2.3 The current checking arrangements will remain in place to ensure any proposals are suitable, this includes the type and size of tables and chairs. A set area will be determined, and guidance issued to ensure applicants are clear on what can be included within the space they are occupying. Any variance from the agreed licence without agreement from WSCC is likely to result in the licence being revoked.

Factors taken into account

3. Consultation

3.1 The Public consultation closed on 24th February 2020. Members of the Environment and Communities Scrutiny Committee will receive an update at the meeting to be held on 5th March 2020.

3.2 The total number of responses received was 154. The significant majority of these were members of the public.

a. 8% of these supported the £520 fee, 92% did not.

b. 42% agreed with a sliding scale, 57% disagreed with a sliding scale 1% did not respond.

c. 7% thought £20 was not enough, 25% thought about right and 68% thought too much.

3.3 As anticipated, when asked, the majority of those who will have to pay the charge thought it was too high even though it will offer a significant saving to the majority of premises when compared to the current charging regime.

- 3.4 The total number of responses by key stakeholders (MP, WSCC Councillors, District and Boroughs, Town/City Councils Business Group Representatives, Premises Owners or Specialist Interest Groups) was 18. This represents 12% of the feedback. Of these 18 responses:
- a. 89% did not support the current £520 fee.
 - b. 50% of respondents did not support a sliding scale.
 - c. 50% of the respondents thought £20 was about right or not enough.
- 3.5 Other responses received:
- a. 2 WSCC members wrote directly to the Cabinet Member stating they did not support the charging for a licence.
 - b. A Borough Council wrote in confirming they did not support any charge for tables and chairs.
 - c. A Town Council wrote in confirming the WSCC economic proposition to facilitate easier and cheaper access to safer, legitimate and authorised use is supported. We would like to see the use of 'A' frame board incorporated into this initiative.
- 3.6 The response from WSCC members, who represent both the members of the public and the needs of the highway authority, were not extensive enough to allow for detailed analysis. It could be surmised that due to a lack of representations, members are believed to be reasonably content with the proposal.
- 3.7 Given the need for this activity to be "Cost Recovery", despite the relatively negative response, unless alternative resourcing can be identified it is recommended the proposal as detailed in section 2 is implemented.

4. Financial (revenue and capital) and Resource Implications

- 4.1 It is anticipated if the recommendation of £150 application and £20 per cover per annum is implemented, the licensing scheme, along with an increase in the number of licences issued, the scheme is likely to cost recover. Going forward this will be reviewed as part of the County Councils annual Fees and Charges report. Once uptake is known the fee will be amended to ensure cost recovery continues to be realised.
- 4.2 In 2019 there are 31 premises paying £520 (£16,120). These premises have an average number of covers of 15 per premises. This will turn into 31 premises, with 15 covers at £20 per cover (£9,300). It is estimated there will be six additional new applications of premises with 15 covers per annum. All application from 1 April 2020 will be subject to the initial application fee.

4.3 Revenue consequences of proposal

	Year 1 2020/21 £	Year 2 2021/22 £	Year 3 2022/23 £	Year 4 2023/24 £
Current Income Assumption	16,120	13,800	15,600	22,950
Existing Income	13,950	11,100	12,900	20,250
Expected additional Intake	2,700	2,700	2,700	2,700
Difference	530	0	0	0

4.4 If the licensing scheme does not recover the costs of administration, additional funds may need to be sought from another budget area.

4.5 There are no capital implications linked to this decision.

5. Legal Implications

5.1 It is unlawful to obstruct the highway without a licence and so a policy needs to be approved.

6. Risk Implications and Mitigations

Risk	Mitigating Action (in place or planned)
Café owners do not pay for a licence	WSSC will take appropriate enforcement action
Financial risk in the event of an incident on the highway	Valid Public Liability Insurance that required a licence indemnifies the council against such claims

7. Other Options Considered (and reasons for not proposing)

7.1 A “per square metre” charge is operated by most authorities who operate a sliding scale. Officers believe that a per cover charging mechanism would be easier to monitor. Notwithstanding, the area would be delineated, and a square metre approach could be adopted in the future if the proposed charge per cover proves problematic.

7.2 Not charging for the whole process. The Highways Service does not have the resources to do this. If we were to not charge, additional resources for the administration, processing, invoicing, consultation, engagement, enforcement and monthly site visits would need to be identified.

- 7.3 Refusing all licences for tables and chairs and enforcing against all premises who unlawfully obstruct the highway. This was not supported, as this activity significantly adds value to our town centres and WSCC wants to encourage this activity.

8. Equality and Human Rights Assessment

- 8.1 Poorly placed street furniture causes a disadvantage to people with disabilities, whether visual or physical, or the elderly. By controlling how ensuring street furniture is appropriately placed the most vulnerable users of the highway will have a better experience of our town centres.

9. Social Value and Sustainability Assessment

- 9.1 The charging for licensing of tables and chairs makes this activity sustainable as it is cost recovery. The proposals will enhance community spaces and encourage café culture.

10. Crime and Disorder Reduction Assessment

- 10.1 This proposal should have no significant impact of Crime and Disorder.

Lee Harris

Executive Director Place Service

Matt Davey

Director of Highways, Transport and Planning

Contact Officer: Mike Thomas 03302226341

This page is intentionally left blank