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## PAVEMENT PERMISSIONS (Min 292/97,413/97 & 437/98)

### 1 SUMMARY

- 1.1 This report, requested by The Rayleigh Town Centre Monitoring Panel, advises Members that the Council already has a licensing system to regulate the placement of objects and structures on the pavement.
- 1.2 Minutes 292/97, 413/97 and 437/98 record the Council's decision to adopt the discretionary provisions of Section 115E of the Highways Act 1980 to grant a person permission to execute works and use objects etc. on, in or over a pavement. Consequently, the determination of applications is a statutory function.
- 1.3 If large numbers of applications for Permission are received, resources would have to be diverted from higher priority work e.g. public entertainment licensing, health and safety and food safety.

### 2 INTRODUCTION

- 2.1 At a meeting of The Rayleigh Town Centre Monitoring Panel on 16<sup>th</sup> January 2001, Members made the following Note Number 13 requesting this report:

*"A" boards - Members received a copy of a letter which had been sent by the Area Manager (Highways) to all traders on 10 January 2001, requesting that those boards on the public highway be removed. Photographs of offending sites had been taken and the Police would be speaking to those traders concerned.*

*Some telephone calls and letters had already been received in response to this letter. One trader had indicated a severe shortfall in trade due to the removal of the advertising board.*

*The main causes of difficulties would be where the highway boundary goes right up to the front door of a shop. A licensing system may need to be considered, although the cost of processing together with enforcement costs would be high and some areas of the town centre would suffer more than others. It was proposed that a report be presented to a future meeting of the Transportation and Environmental Services Committee.*

### 3 PAVEMENT PERMISSIONS

- 3.1 The granting of Pavement Permissions was adopted in 1997 following a request for permission to site two tables and chairs on the pavement

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outside the Crown Public House, Rayleigh. This was the first and only request the Council had received, and the application was refused.

- 3.2 The primary purpose of the legislation is to enable facilities and amenities to be provided within the highway in a manner the does not create nuisance or obstruction.
- 3.3 The Council may grant a person permission:
1. To carry out works or place objects or structures on, in or over a footpath, for the purpose of enhancing the amenity of the highway and its immediate surroundings or of providing a service for the benefit of the public or a section of the public; and to maintain those works or objects or structures;
  2. To enhance a footpath by providing lawns, trees, shrubs or flowers;
  3. To provide, maintain and operate facilities for recreation or refreshment on a footpath; or
  4. To use objects or structures on, in or over a footpath, for the purpose:
    - which will result in the production of income;
    - of providing a centre for advice or information; or
    - of advertising.
- 3.4 Pavement Permissions expire one year after the date of grant, and are granted with conditions. If the conditions are contravened, the Council has power to serve a notice requiring steps to be taken to remedy the breach. If the notice is contravened, the Council has power to do work in default and to recover its expenses.
- 3.5 However, the Council does not have power to prosecute if a person requires a Pavement Permission but continues to operate without one. Only the Highways Authority may prosecute and remove items in such cases if they consider it appropriate.
- 3.6 The current fees for the grant and renewal of a Pavement Permission are £112 and £56 respectively.
- 3.7 Following receipt of an application, including a site plan and full details of the proposals, the following are consulted:
1. The Highway Authority
  2. The Police Authority
  3. The Local Planning Authority
  4. The Local Chamber of Commerce
  5. The appropriate Parish Council
  6. The general public via a requirement to display a public notice.
  7. Adjacent properties.
  8. Frontagers.

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- 3.8 The Transportation Sub-Committee determines applications where objections have been received to the application.
- 3.9 Where there are no objections and the Highway Authority's consent has been received, the Head of Housing, Health & Community Care is authorised to grant Permission with appropriate conditions, subject to prior notification being given to Members and an opportunity formed for the matter to be put before Committee for consideration.
- 3.10 The Head of Housing, Health & Community Care is also authorised to refuse an application for Permission where the Highway Authority or frontagers have not given consent or where the appropriate planning permission has not been obtained or where premises are licensed for the sale of alcohol.
- 3.11 The following criteria are taken into account when determining an application for Permission:
1. Type of Premises.
  2. Suitability of the applicant.
  3. Suitability of the site.
  4. Nuisance potential to local residents and businesses from noise and general disturbance and the possibility of mitigating nuisance by limiting the hours and the days of operation.
  5. Effect on other local businesses - where it would cause undue interference or inconvenience to other outlets in the highway in which the applicant wishes to trade.
  6. Compliance with relevant legislation - whether there would be any breaches of relevant legislation.
- 3.12 Appropriate conditions to attach to a Permission would include:
1. Types of objects, site area, operating times;
  2. Prohibiting a nuisance, annoyance, inconvenience or obstruction of the street or to persons using the street;
  3. Maintaining the site free from litter and refuse;
  4. Requiring removal of the objects outside trading hours;
  5. Permitting access for statutory undertakers and telecommunication operators to their apparatus;
  6. Allowing works or use of the highway by the Council, County Council, the Police, Fire, Ambulance and other emergency services;
  7. Keeping the objects in good repair and condition at the operator's expense;
  8. Requiring the licensee to indemnify the Council against any claims of injury, damage or loss arising from the grant of the Permission. Currently, the applicant is required to produce an insurance policy in the sum of at least two million pounds.

#### **4 RESOURCE IMPLICATIONS**

- 4.1 Applications Pavement Permissions are processed by The Safety, Food & Regulation Unit, which is short of staff. Despite advertising twice recently, there is still a vacancy for a Principal Environmental Health Officer and, a Senior Environmental Health Officer post has only recently been filled after being vacant for five months. Consequently, work has accumulated and has to be prioritised.
- 4.2 So far, the workload in respect of Pavement Permissions has been minimal, since to date only one application for Pavement Permission has ever been received and current practice is not to be proactive and survey the district for items placed on the highway. Consequently, Pavement Permissions do not impinge on higher priority work such as public entertainment licensing, health and safety, food safety, infectious disease control and animal welfare licensing, all of which is the responsibility of the Safety, Food & Regulation Unit.
- 4.3 Surveying the district for items placed on the pavement and the receipt and processing of large numbers of applications for Pavement Permissions will have an adverse effect on these other areas of work.

#### **5 LEGAL IMPLICATIONS**

- 5.1 The Council must exercise its licensing function in a fair and judicious manner. This requires consistent application of the provisions throughout the district.

#### **6 PARISH IMPLICATIONS**

- 6.1 The Pavement Permission provisions apply to all streets throughout Rochford District and would have financial implications for all businesses in the district that put objects on the pavement.

#### **7 RECOMMENDATION**

- 7.1 It is proposed that the Committee **RESOLVES**
- (1) That the Highway Authority be requested to enforce where they find "A" boards or articles on the pavement which cause a hazard or obstruction.
  - (2) Confirm the current low profile, reactive policy as outlined in paragraph 4.2 with respect to the Council's Pavement Permission provisions. (HHHCC)

G Woolhouse

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**Background Papers:**

None

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