



REPORT TO: SPECIAL MORAY COUNCIL ON 25 OCTOBER 2023

SUBJECT: PERMISSION FOR HOSPITALITY BUSINESSES TO PLACE FURNITURE AND NON-FURNITURE ITEMS ON PUBLIC FOOTWAYS

BY: DEPUTE CHIEF EXECUTIVE (ECONOMY, ENVIRONMENT AND FINANCE)

1. REASON FOR REPORT

- 1.1 To seek approval for the application process, charges and guidance for the placement of furniture (tables and chairs) and non-furniture items on the public footway for restaurants, cafes and public houses.
- 1.2 This report is submitted to Council in terms of Section III (F) (17) of the Council's Scheme of Administration relating to traffic management, and is submitted to Council for efficiency as the policy and charging elements of the report cross two separate Committee functions (Economic Development and Infrastructure Services and Corporate committees).

2. RECOMMENDATION

- 2.1 **It is recommended that Council approves the applications process, charges and guidance for the placement of furniture and non-furniture items on the public footway to enable outside dining for restaurants, cafes and public houses.**

3. BACKGROUND

- 3.1 The appropriate use of the public realm for outdoor eating and drinking has been highlighted as a way of supporting hospitality businesses and encouraging visitors to Moray's town centres and coastal villages. Until this year the placement of furniture and other items to enable outdoor dining on public footways outside premises has required planning permission. However, changes to Permitted Development Rights in Scotland brought in on 31 March 2023 remove the requirement for planning permission so permission is now conditional on meeting Roads Authority requirements associated with Section 59 of the Roads (Scotland) Act 1984.

3.2 Section 59 relates to the control of obstructions in roads and states that:

“ ... nothing shall be placed or deposited in a road so as to cause an obstruction except with the roads authority’s consent in writing and in accordance with any reasonable conditions which they think fit to attach to the consent ...”

3.3 As the placement of furniture within the public footway previously required planning permission, the Council has no standalone process for hospitality businesses to seek the necessary permission from the Roads Authority. As part of the planning process, Transportation were a consultee and provided comments on the suitability of the proposal. If Transportation had no objections then consent was gained implicitly through the planning process.

3.4 There have also been occasions when hospitality businesses have placed furniture and other items within the footway without seeking planning permission. The procedure followed when such a situation was noted during routine inspections or brought to the Council’s attention through a complaint, included a site visit to determine if there was sufficient space for pedestrians to safely pass.

3.5 In instances where there was sufficient space, the business would be asked to seek retrospective planning permission. However, if there was not sufficient space, Officers would seek the removal of the furniture and non-furniture items by talking to the proprietor of the business and issuing a follow up letter. Should the business continue to place the obstructions on the footway, then the Council would use its powers under Section 59 of the Roads (Scotland) Act 1984 to remove them and recover the costs for their removal.

3.6 Transport Scotland’s good practice guidance ‘Roads for All’ highlights the importance of ensuring that footways are free from clutter and remain a safe environment for vulnerable road users and states that:

“A well designed pavement café, the right location, can add value to the pedestrian environment and should present no barriers or hazard to disabled people. However, a badly designed café or a café on a too narrow a footway can restrict the pedestrian route and create a hostile environment for disabled people.”

3.7 The presence of furniture within a footway also present hazards to people with impaired vision, in particular those who use a long cane as an assistance tool. Many hospitality businesses are not aware of the impact that tables and chairs can have on this group of road user and the need to make sure that areas of seating are behind a defined barrier.

3.8 It is therefore important that clear guidance is provided to local businesses to ensure that any outside dining on the public footways does not represent an obstruction to other road users. In the absence of the need for planning permission, an application process supported by clear guidance on what is and what is not acceptable is required.

3.9 A review of how other local authorities across Scotland treat outdoor hospitality on the public footway has been undertaken. During this review it

was noted that most Local Authorities issue an annual permit, which is subject to a charge. The proposed application form and guidance have been discussed with Moray Chamber of Commerce and Elgin BID during a meeting at the end of August and their comments have been taken on board (see para 5.6).

- 3.10 Following that meeting Elgin BID surveyed their members for feedback on the proposed guidance and application process. Of the 16 responses received from members of BID, 9 related to the level of the fee and that it would be non-refundable if an application was unsuccessful. The information provided within the guidance, along with additional information for businesses (see para 5.6) will seek to minimise the risk of an unsuccessful application.
- 3.11 The following sections set out proposed guidance, the application process and levels of charges for the placement of tables and chairs on the footway.

4. PROPOSED GUIDANCE

- 4.1 A review of other Local Authority guidance was undertaken which found that the level of detail in the guidance varies widely. Large cities such as Edinburgh and Aberdeen have very detailed, prescriptive guidance whereas other more rural authorities areas have simpler guidance. However there are common elements across the various guidance documents which are:
- a) Ensuring that there is a minimum area of footway kept clear to enable the safe passage of pedestrians, particularly those with impaired mobility or vision.
 - b) Having movable barriers around the area to be used for outdoor hospitality, which include low level 'kickboards' to highlight the presence of the barriers to visually impaired persons using a long cane as an aid.
 - c) The business monitoring and keeping the area clean and tidy, and removing the tables, chairs and barriers at the end of the day.
 - d) Removing the tables, chairs and barriers upon request to allow for roadworks, access to utilities, events etc.
 - e) For licensed premises, the operator's alcohol licence must also cover the area applied for.
- 4.2 Guidance for applicants has been prepared and is Proposed attached as **APPENDIX 1**. In summary this guidance seeks:

Location

- a) Applications will only be considered for footways and pedestrianised areas where there is public access and the area is part of the Public Road.
- b) An unobstructed space between the carriageway and the front of the outdoor hospitality must ideally be 2.0 metres and no less than 1.5 metres at any constraint.

- c) For locations near junctions and accesses, visibility splays (sightlines) must be kept clear.
- d) The hospitality area must be defined by a removable barrier, and has a low level kick board which can be detected by the visually impaired.
- e) All tables, chairs, barriers and other items must be removed off-street out with the agreed operational hours or when the hospitality area is not in use, to reduce the risk of anti-social behaviour and/or damage to the furniture or other property.

Furniture

- f) The furniture should be of a sufficient quality and form of construction to ensure it will not be blown away by the wind or be easily moved to another area where it can cause a hazardous obstruction, and as a general principle plastic garden furniture is unlikely to be sufficiently robust.
- g) Non-furniture items such as gas heaters must comply with the relevant safety standards.

Environmental Requirements

- h) The operator must keep the area clean and free from litter during the permitted hours of operation.
- i) The preparation of food must be carried out within registered premises and not in the outdoor hospitality area, unless permission has been granted by the Council's Environmental Health section
- j) The operator must provide suitable and adequate lighting if it is intended that the outdoor area is used during the hours of darkness. Lighting proposals will be reviewed by Building Standards section.

Requirements for Approval

- k) Applicants must agree to the removal, at short notice, of all tables, chairs and associated items at any time they are requested to do so by the Council, Statutory Undertakers or by the Emergency Services in order to respond to an emergency situation (e.g. a burst water pipe).
- l) Permission may be temporarily withdrawn by the Council at any time to allow for roadworks, large events or for any other reasonable similar scenario. Notice of the start and finish of the withdrawal period will be provided in advance (minimum 5 working days notice).

5. PROPOSED APPLICATION PROCESS

- 5.1 During the Covid-19 restrictions, a temporary application process for furniture on the footway was developed in response to restrictions on the number of

covers that cafes/restaurants/public houses could have inside and to support recovery of businesses. The following proposed application process takes cognisance of the approach taken at that time and the approaches taken by other local authorities.

- 5.2 Applications are to be made to the Traffic Team and follow the same process that exists for road opening permits, permissions to place skips and scaffolding on the public road etc. Applications will also be shared with Licensing, and the Environmental Protection and Environmental Health sections so they are aware of any relevant implications arising from the application.
- 5.3 The proposed application process requires the following information to be supplied:
- a) Evidence of public liabilities insurance of £5m;
 - b) Plan showing extent of area (Scale 1:100minimum);
 - c) Details of the proposed furniture and barriers, and other items to be used;
 - d) Evidence that area is within sight of premises and there are staff available who can leave the premises to visit the area to ensure it that the furniture and barriers remain within the agreed area and do not cause an obstruction;
 - e) Details of how the area will be managed during operational hours to ensure that the furniture and barriers remain within the agreed area and do not cause an obstruction; and
 - f) Details of where the furniture, barriers and other items will be stored when they are not in use.
- 5.4 The proposed form is similar to the existing road opening permit form and other permissions to place items on the public road e.g. skips, scaffolding and is attached as **Appendix 2**.
- 5.5 Applicants will need to agree with the conditions as set out in guidance document (**Appendix 1**) and if there is a deviation from permission/guidance, then the permission can be revoked.
- 5.6 Moray Chamber of Commerce has recommended that details of the application process, with some examples of good practice, are added to the Moray Business Advice portal. This would assist applicants in determining whether or not their application would be successful before submitting, and minimise the risk of an unsuccessful application. Information will be uploaded, including photographs of good/bad practice from locations outwith Moray. Elgin BID have requested that an officer attends a future BID meeting to talk hospitality businesses through the application process and offer initial advice, Officer attendance at the Elgin BID meeting will be in the new year. Officers would attend a Moray Chamber of Commerce meeting should this be requested.

6. PROPOSED CHARGES

- 6.1 A review of charges and fees applied by other local authorities found that some charge an annual flat rate fee whilst others charge per square metre occupied, and have differing rates for different locations. The authorities which have differing rates tend to be those that include cities with areas that are subject to very high levels of footfall.
- 6.2 The fees charged are used to cover administration and inspection costs which would be incurred by the Roads Authority in checking applications and ensuring that the tables, chairs and barriers remain in the agreed location. The proposed level of fee is lower than the fees for a planning application for the placement of tables and chairs on the public road, which was the previous means of gaining permission.
- 6.3 Moray is a rural authority with smaller settlements. A flat rate charge of £175.00 per annum is proposed. This charge is similar to other authorities and is the current charge for a Road Opening Permit. The charge will be reviewed as part of the annual review of all Council charges at the start of next year. A separate charge would be applied should there be a requirement to remove furniture and other items as part of any enforcement action undertaken by the Council.
- 6.4 The annual permit may be renewed by an existing applicant upon confirmation that pre-existing arrangements are still accurate.

7. SUMMARY OF IMPLICATIONS

(a) Corporate Plan and 10 Year Plan (Local Outcomes Improvement Plan (LOIP))

The use of the public realm for outdoor hospitality can support businesses and encourage visitors to town centres and coastal villages, leading to increased economic activity.

(b) Policy and Legal

Changes to permitted development rights have removed the requirement for planning permission for outdoor hospitality areas on the public footway and in the public realm, subject to the granting of a licence under Section 59 of Roads (Scotland) Act 1984. Premises licenced for the sale/consumption of alcohol must extend their alcohol licence to cover proposed outdoor area. Any implications relating to data protection or processing fair notice about how applicants data will be stored / used will be addressed prior to implementation.

(c) Financial implications

Costs of processing applications and site inspections are to be covered by annual application fee. This fee will increase on an annual basis in keeping with other Council charges.

(d) Risk Implications

The indiscriminate placement of tables and chairs on footways and in the public realm can result in obstructions and hazards for pedestrians. An application process and associated guidance will reduce the risk of

injury. Operators will be required to demonstrate that they have public liability insurance which will be checked as part of the application process.

(e) Staffing Implications

The consideration of applications and checking of compliance will be undertaken as part of existing staff duties.

(f) Property

The new permitted development rights cover public footways and the public realm only. Outside seating for hospitality on private or other Council ground will still require planning permission.

(g) Equalities/Socio Economic Impact

In practical terms there are no changes to the impacts of the council's position on those with protected characteristics. The guidance regarding disabled access and safety will continue as per the current arrangements.

(h) Climate Change and Biodiversity Impacts

There are no climate change or biodiversity impacts associated with this report.

(i) Consultations

The Depute Chief Executive (Economy, Environment and Finance), Head of Environmental and Commercial Services, Legal Services Manager, Sean Hoath, Senior Solicitor (Licensing and Regulatory) Chief Finance Officer, Development Management and Building Standards Manager, Environmental Health and Trading Services Manager, Environmental Protection Manager, Roads Maintenance Manager, Equalities Officer and the Democratic Services Manager have been consulted and any comments taken into consideration.

8. CONCLUSIONS

8.1 There are now Permitted Development Rights for hospitality businesses to place tables and chairs on the public footway to enable outside dining. However the rights are conditional on meeting the requirements of Section 59 of the Roads Scotland Act.

8.2 To safeguard operation of the public footway, guidance and an application process has been developed. Other Local Authorities in Scotland have similar guidance and application processes in place already.

8.3 It is proposed that a charge of £175.00 is made for the application, which is to be renewed on an annual basis.

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Background Papers:
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