

Supplementary Planning Guidance

Street Cafes

Approved by the Council on 4 October 1995

Guildford Borough Council
Planning Division
Department of Technical Services
Millmead House, Millmead
Guildford, Surrey
GU2 5BB
Telephone: (01483) 444669

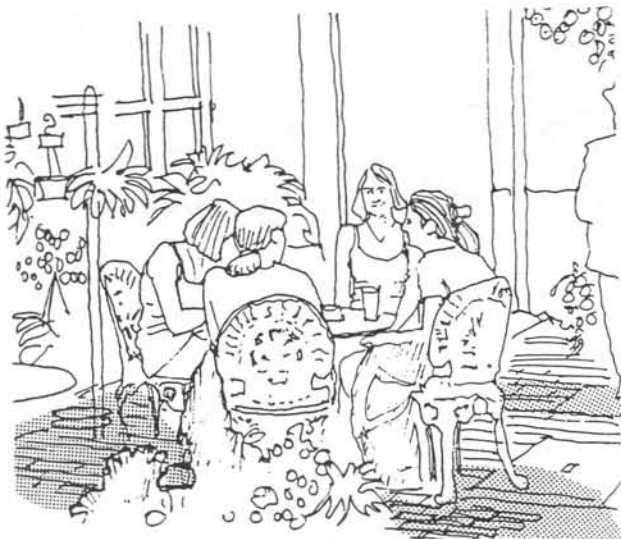
CONTENTS

	Page
1.0 Introduction	1
2.0 Legislation	1
Highway Licence	1
Planning Permission	1 - 2
Liquor Licence	2
3.0 Planning Policy	2
4.0 General Guidelines For The Assessment Of Applications For Planning Permission And Highway Licence	2 - 3
5.0 Guidelines Applying To Specific Locations	3
Fully Pedestrianised Streets	3
Partially Pedestrianised Streets	3
Unpedestrianised Streets with Footway and Carriageway	3
Special Areas	3
Other Considerations	3 - 4
6.0 Planning Permission And The Highway Licence	4
Determination of a Planning Application	4 - 5
Determination of a Highway Licence	5
Cost of Application	5
7.0 If Permission Is Granted	5 - 6
8.0 General Information	6

1.0 Introduction

1.1 Outdoor seating and tables add important vitality to our environment. In Guildford Borough there are a number of different pubs, restaurants, wine bars and cafes that may wish to have seating and tables, for the use of their customers, on pavements outside their premises. Where the pavement concerned is a public highway, both a highway licence and planning permission will need to be obtained. This is to ensure that:-

- i. adequate space is left for the safe and free movement of pedestrians.
- ii. consideration is given to the safe movement of people with impaired vision, wheelchair users and parents with pushchairs.
- iii. consideration is given to the location of the amenity, in terms of possible noise disturbance for local residents, and nearby shops and offices.



Angel Gate

1.3 This Guidance Document gives general guidelines on the criteria that need to be met if consent to place tables and chairs on the highway is to be granted. The procedure for obtaining permission to place tables and chairs on the highway is complex and therefore often slow. This is due to the fact that two types of permission are required, which are dealt with by two different authorities, as follows:-

- (i.) **Highway Licence** - Surrey County Council.
- (ii.) **Planning Permission** - Guildford Borough Council.

In order to overcome the difficulties associated with dealing with two local authorities, Guildford Borough Council and Surrey County Council have developed a more streamlined procedure for applying for permission to use the public highway for tables and seating. Anyone wishing to make such an application need now make only a **single application** to Guildford Borough Council, on the relevant application form, which is available at the Reception of the Planning Division, Guildford Borough Council.

1.4 Applicants should ensure that they comply with other legislation for which the Council is not the administering authority.

2.0 Legislation

Highway Licence

2.1 Under the **Highways Act 1980**, Surrey County Council, as highway authority, can license the use of an area of the public highway for the positioning of tables and chairs. The granting of licences is subject to sufficient footway width being retained for the safe movement of pedestrians.

2.2 In most cases, the County Council does not own the land which makes up the public highway. Such land is usually owned by the owners of the property fronting the highway but is maintained for the use of the public by the Highway Authority.

2.3 Under the provisions of the Highways Act, the County Council cannot grant a licence unless it obtains the consent of all interested frontagers who would be materially affected by the proposal. Applicants for licences do not have a right to appeal if their application is refused.

Planning Permission

2.5 Under the **Town and Country Planning Act, 1990**, the placing of tables and chairs on the highway involves a material change of use of the land concerned and therefore requires planning permission.

2.6 Applications will be considered against relevant Borough Council planning policies. In addition, the Council will take into account:-

- (i.) the individual merits of the application, and;
- (ii.) relevant central government policy.

If an application for planning permission is refused, the applicant may appeal to the Secretary of State for the Environment. However, if a licence has been refused under the Highways Act the applicant will not

be able to proceed to install the street cafe even if planning permission is granted, whether by the Council or on appeal.

2.7 Planning permission is not normally required for the placing of tables and chairs on a private forecourt. However, if the public has had access to the forecourt for a number of years the area may have become "deemed highway". This is particularly likely where the public highway is too narrow to accommodate pedestrian activity. In such cases planning permission will be required. If the public have free access to the forecourt a street trading consent (under the 1982 Act - see paragraph 5 below) may be required, depending upon the location.

Liquor Licence

2.8 The consumption of alcohol in an outdoor seating area will, in all cases, require a special licence from the Licensing Justices. Any applicant wishing to sell alcohol for consumption in an outdoor seating area should seek legal advice.

3.0 Planning Policy

3.1 Policy 8S of the Guildford Borough Local Plan (October, 1993) states that the provision of outdoor eating facilities will normally be encouraged on appropriate sites in Guildford town centre.

In accordance with this policy, Guildford Borough Council will consider granting planning permission for the provision of tables and chairs on the highway, where such development will not:-

- (i.) obstruct the movement of pedestrians, prams and wheelchairs.
- (ii.) adversely affect the visual quality and character of the area.
- (iii.) adversely affect the setting of a listed building.
- (iii.) adversely affect the amenity of and access to properties in the vicinity.
- (iv.) cause disturbance to residential properties and other activities in the vicinity.

3.2 Objections relating to competition are not planning matters and will therefore not be taken into account.

"Sandwich Bars"

3.3 If tables and chairs are placed outside sandwich bars, the use, in planning terms, may change and planning permission might be needed. Further advice on this can be obtained from the Planning Division.

4.0 General Guidelines For The Assessment Of Applications For Planning Permission And Highway Licence



4.1 In order to allow safe and unrestricted pedestrian movement the following criteria must be complied with:-

- (i.) A minimum of 1.8 metres width of unobstructed pedestrian footway, or one third of the width of the footway - whichever is the greater - must be provided. A width in excess of 1.8 metres may be required in those areas where there are high pedestrian flows and permanent obstructions, such as street furniture. In the case of the latter, a minimum width of 1.8 metres will be required from the line of the street furniture, rather than from the kerb. Guildford Borough Council will consider each case on its individual merits.
- (ii.) It is essential that the route available to pedestrians is straight and unobstructed.
- (iii.) In addition to the 1.8 metres of pedestrian footway, a circulation / manoeuvring space of 0.75 metres must also be provided. This is to allow movement around the tables and chairs and to allow for movement of the chairs themselves.

4.2 The Council will seek to ensure that available space for tables and chairs is shared equally between premises. There may, however, be instances where this is not possible and designated areas may vary in size in the same street. The Council's decision on any such matter is final.

5.0 Guidelines Applying To Specific Locations

5.1 Applications for tables and chairs will not normally be granted in streets which are *prohibited* streets. A list of streets designated under the 1982 Act as *consent* streets (where prior consent is required) and those designated as *prohibited* streets (where no street trading is permitted), are detailed in the 'Street Trading Local Policy Document'.

There are four categories of location where applications for tables and chairs on the highway will be considered, as follows:-

- (i.) fully pedestrianised streets where there is no vehicular access at any time.
- (ii.) partially pedestrianised streets with vehicular access at specific times.
- (iii.) streets with footway and carriageway.
- (iv.) special areas

Guidelines for each category are set out below:-

Fully Pedestrianised Streets (streets permanently closed to traffic)

5.2 The criteria set out in Section 4.0 will apply. The unobstructed pedestrian route should fall equally either side of the centre line of the highway. This ensures that the space available for tables and chairs is shared equally between premises on each side of the street.

Partially Pedestrianised Streets (streets closed to vehicle traffic during certain hours of the day)

5.3 In most cases, tables and chairs will be restricted to the pedestrian footway - both *inside* and *outside* the hours of vehicular access. This is to guarantee an unobstructed route for emergency vehicles. The criteria set out in Section 4.0 will apply.

5.4 *Outside* the hours of vehicular access there may, in some circumstances, be scope for placing tables and chairs outside the boundary of the pedestrian footway. However, a 3 metre lane would

be required to be kept free at all times for the entire length of the street, in order to allow a clear route for emergency vehicles. Each case will be considered by Guildford Borough Council on its individual merits.

5.5 If permission is granted for the placing of tables and chairs outside the boundary of the pedestrian footway, it will usually commence 30 minutes after the road has been closed to traffic and will cease 30 minutes before the re-opening of the road. This should allow adequate time for any cleaning-up that is required.

Unpedestrianised Streets with Footway and Carriageway (streets open to vehicle traffic at all times)

5.6 Tables and chairs will be restricted to the pedestrian footway at all times. The criteria set out in Section 4.0 will apply.

Special Areas

5.7 Some areas may exist in the Borough where 'special' arrangements for tables and chairs on the highway will be considered, as part of an environmental improvement scheme.

Other Considerations

5.8 In circumstances where the Police consider that public order and public safety will be adversely affected by the placing of tables and chairs on the highway, the Borough Council may be requested to refuse an application for the positioning of tables and chairs on the highway, on security grounds.

The Police will be informed, by Guildford Borough Council, of all applications for the placing of tables and chairs on the highway.

5.9 Guildford Borough Council recognises that free access for disabled groups must be maintained at all times. Care will be taken to ensure that seating, tables and planters are arranged in such a way so as to create minimum hazard for disabled, blind and partially sighted persons. Full consideration will be given to this when determining applications.

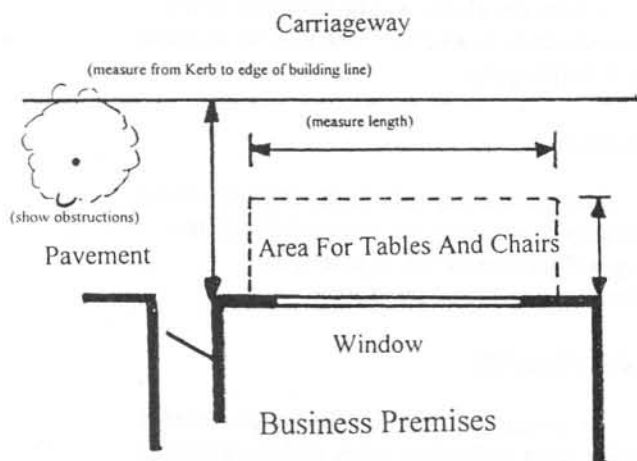
5.10 In certain circumstances consent may be required from the Council under the Provisions of Schedule 4 to the Local Government (Miscellaneous Provisions) Act 1982. For the most part this will involve non highway forecourts, as the grant of a Highway Licence under the Highways Act 1980 removes the requirement for a Street Trading Consent.

6.0 Planning Permission And The Highway Licence

6.1 An application for planning permission and a highway licence must be made on the appropriate form, which is available from the Planning Division at Guildford Borough Council. The procedure followed in determining such applications is set out below:-

Determination Of A Planning Application

6.2 Applications must include a location plan such as the one below:-



Example of a suitable plan to accompany the application form. Address of property should also be indicated

The location plan must provide the following information:-

- ◆ area (including dimensions) where proposed tables and chairs are to be placed
- ◆ position of building line.
- ◆ position of kerb-line adjacent to the proposal, or the opposite the building line in a pedestrianised street.
- ◆ entrances to premises within or adjacent to the area proposed for tables and chairs.
- ◆ area considered to be a private forecourt.

- ◆ location of trees, lamp posts and any other street furniture.

In addition, the following information must be provided on the application form:-

- ◆ Details of number of tables and chairs proposed.
- ◆ Details of any umbrellas proposed.
- ◆ Specification of hours during which it is proposed that tables and chairs be placed on the highway.

Any application that does not include the above information will be treated as invalid and will not be considered until all information required by Guildford Borough Council is provided.

6.3 Guildford Borough Council will publish a site notice, which will be affixed to or near the site, giving details of the application for planning permission and Highway Licence. Representations will be invited within 28 days of the publication of the notice. If the proposal is in a conservation area or affects the setting of a listed building, the application for planning permission will be advertised in a local newspaper.

6.4 Guildford Borough Council will notify all frontagers and owners of other premises who are considered likely to be materially affected by the proposal. Frontagers include all occupants (leaseholders and freeholders) of the upper and lower floors of "affected" premises. The consent of frontagers will be requested, with or without conditions. They will be advised that if they intend to object to the application concerned, they must do so within 28 days and specify their reasons for objecting.

6.5 Only objections which raise valid planning matters, such as loss of amenity, obstruction of the highway, etc., can be taken into account. Objections relating to increased commercial competition cannot be considered.

6.6 Refusal of a highway licence may proceed irrespective of whether or not the consent of the frontagers has been obtained. Planning permission may only be refused if there are valid planning grounds for doing so.

6.7 The decision to grant or refuse an application for planning permission is taken by members of the Planning Committee at Guildford Borough Council, or under delegated power. The latter procedure is used where no objections have been made to the application. The highway licence will not be issued until the planning permission is granted.

6.8 The applicant has the right to appeal to the Secretary of State for the Environment if planning permission is refused. If the highways licence is refused there is no right of appeal.

Determination Of A Highway Licence

6.9 Power relating to the licensing of street cafes are contained in the Highways Act 1980, Section 115 A-K. In particular, Section 115C allows Councils to provide recreation and refreshment facilities and this is extended to persons other than Councils by Section 115E.

6.10 Initially, a notice would be placed on site advertising the intended use of part of the footway as a street cafe.

6.11 If the applicant wished to use the frontage outside other premises, the Highway Authority would be required to write to the owners/occupiers of those premises to obtain their permission before a notice could be posted.

6.12 Following the display of a notice, a period of 28 days would be available for any person to make representations about the proposal. The Highway Authority would have to consider any objections and resolve them before proceeding with the issuing of a licence.

6.13 If consent is unreasonably withheld or if a frontager who has been notified requests conditions and it proves impossible to agree on these, an independent arbitrator will be appointed and will be asked to make a judgement on this matter. This decision will be final and binding. If no response is received from a frontager who has been notified, this will also be deemed as consent withheld unreasonably and therefore subject to arbitration. **The independent arbitrator's costs will be paid by the applicant.**

6.14 If Guildford Borough Council is minded to grant planning permission and Surrey County Council have agreed to grant a highway licence, even though a frontager refuses consent, a highways licence cannot be issued until it has been determined at arbitration that the consent of the frontager has been unreasonably withheld. If a decision cannot be made on the appointment of an arbitrator, an appointment will be made by the President of the Chartered Institute of Arbitrators. If a frontager gives consent subject to conditions which Guildford Borough Council considers to be unreasonable, the matter will again be determined at arbitration.

6.15 If a licence were to be granted it would include any conditions that the Highway Authority saw fit to impose, including the duration and extent of the

permission. Any such conditions would be legally enforceable.

Cost of Application

6.16 The cost of drawing up a licence is recoverable under Section 115F Highways Act 1980 and has been included in the cost of the application.

7.0 If Permission Is Granted

7.1 The highway licence and planning permission for these uses will run for a period of **one year**. The licence and permission will refer to a specific area of the highway and will stipulate the number of tables and chairs.

7.2 The seating area will be delineated to indicate where all furniture and associated activity must be contained. Umbrellas must be secured in such a way that they do not project beyond the designated area.

7.3 Guildford Borough Council will specify the type of delineation required at the time of issuing the highway licence and granting planning permission. The type of delineation required, i.e. whether permanent or temporary and style, will be considered for each application on an individual basis.

7.4 The licence will normally define the hours during which tables and chairs can be placed on the highway. Outside these hours all furniture must be removed by the owner / operator and the highway cleaned of any debris.

7.5 Guildford Borough Council may impose special additional conditions when necessary.

7.6 The licensee is responsible for ensuring that the conditions of the highway licence and planning permission are adhered to.

7.7 The licensee must also be able to demonstrate to Guildford Borough Council that a £5 million public liability insurance cover has been arranged, prior to the granting of planning permission or the highway license.

7.8 Surrey County Council, under the Highways Act (Section 115K), has the powers to ensure compliance with the terms and conditions of the highway licence. It is likely that 2 to 3 random inspections would be made each year. Associated expenses would be recovered from the licensee.

7.9 Any costs incurred as a result of damage to the highway, due to the positioning of tables and

chairs, will be recovered from the licensee by the highway authority.

8.0 General Information

For further information or if you would like to discuss a particular proposal, please contact the Borough Planning Officer, Guildford Borough Council, Millmead House, Millmead, GUILDFORD, Surrey GU2 5BB

If you would like to make an application for placing tables and chairs outside your business, please fill in the appropriate application form, which is available from the Planning Reception of Guildford Borough Council.

For further information on this Guidance Note contact Catherine Johnson at the above address or on (01483) 444669.