



Appendix E

Amenities on the Highway

Policy Guidelines, Application Process and Conditions

www.portsmouth.gov.uk

Introduction & Overview

Portsmouth City Council (“the Council”) supports and encourages the use of amenities on the highway and recognises that their provision can make a positive contribution to the street scene by:

- providing facilities for people who visit, work or live in Portsmouth
- aiding the local economy and by maximising the use of public space

This policy is intended to help businesses understand where the placing of objects or structures on the highway might be permitted. However, the Council will require that any amenity permissions are maintained to a high standard and that robust enforcement action will be taken to ensure that obstruction to the highway is kept to a minimum.

The policy has been written after extensive internal consultation and with the views of individual councillors, the Police and Portsmouth Disability Forum. The policy will be reviewed every 3 years.

In order to ensure that any application to place objects or structures on the highway makes a **positive contribution and does not cause an unreasonable obstruction** to the area in question (and to protect rights and safety of those persons using the highway); the Council has adopted requirements that must be met by any applicant.

The Council is of the view that the provision of highway amenities must be carefully managed to ensure that the public are not put in danger of injury or worse. Especially at risk are people with impaired vision or other disabilities, children or people pushing prams and older people.

Additionally, amenities need to be sited where they do not impede rights of access, block vehicular sight lines or obstruct fire paths and emergency access routes and there should be adequate thoroughfare for pedestrians including wheelchair users and people with assistance dogs.

Amenities must not be permanent structures and must be removed during periods outside the scope of the permission.

Amenities (particularly tables, chairs and parasols) **MUST** be of good quality and design and positively enhance the street scene and public space.

The Licensing Service of the Council will administer the amenity scheme in consultation with the highway authority (and after taking advice from other specialist council staff) and will arrange for any contested applications to be referred to a panel of the Licensing Committee for final adjudication.

Any proposals that might require planning permission will ordinarily need to be approved by the Planning Authority prior to the submission of an amenity application.

Any unauthorised highway use constituting an unreasonable obstruction will be investigated

And finally, each application will be considered on its merits.

Legal Considerations

The area for any amenity permission must be a highway as defined by Section 115A of the Highways Act 1980 ("the Act), namely:-

- A highway in relation to which a pedestrian planning order is in force;
- A bridleway;
- A footpath (including a walkway as defined in Section 35(2) of the Act;
- A footway;
- A subway constructed under Section 69 of the Act;
- A footbridge constructed under Section 70 of the Act;
- A highway whose use by vehicular traffic is prohibited by a traffic order but whose use by other traffic is not prohibited or restricted or regulated by such an order; and
- To a local Act walkway.

The Council **may** grant permission to place objects or structures on the highway in accordance with Section 115E of the Act.

These objects or structures are termed "amenities" and although no strict statutory definition is given, could include such things as, but not limited to:

- Tables, chairs and parasols;
- Goods, for example fruit and vegetables or flowers outside a shop premises;
- Planters;
- Barriers, screens or enclosures to contain tables, chairs and/or outside designated smoking areas etc;
- "A" Boards or other advertising boards.

It is important to note that any person who, without lawful authority or excuse, in any way wilfully obstructs the free passage along a highway commits offence(s) contrary to section 137 of the Act.

This policy is NOT concerned with objects, furniture or goods etc placed on a private forecourt which forms part of a building curtilage; or if the land is considered private where the public have access only with the implied or express permission of the land owner.

In cases where there is any doubt about the ownership or responsibility in relation to a "highway" please contact the Licensing Service/City Helpdesk or seek your own legal advice prior to making any amenity application.

Design considerations:

Requirements, Standards and Layout

Before any amenity use on the highway is proposed or granted, the following issues will need to be considered:

- **Space** – is there enough room for the proposed use?
- **Environment** – is the immediate environment suitable? Is it a conservation area? Will air quality affect people using the amenity? Are the amenities suitable for the area and fit for purpose?
- **Other Needs** – how will other highway users and usage be affected? Will neighbours be affected? Is the proposal in an area deemed a "special policy area" due to say the cumulative night time economy?
- **Is planning consent required** for any advertisements on parasols or barriers and screens? Applicants would need to make separate application or consult with the City Development Officer

Space

The size of the amenity area will depend on the type of usage and the actual space available. Each case will be determined on its own merits with the overriding principle being that public safety is paramount. There must always be sufficient room for pedestrians and others to safely use the footpath, taking into account fixed items like street light columns, waste bins, post boxes, parking meters and other street furniture. Access to fire hydrants must also be maintained.

A minimum clearance width of between 1.8 and 2 metres must be maintained between the outer edge of any amenity and the edge of any vehicular trafficked edged or other defined carriageway. This is to allow safe movement for pedestrians, wheelchairs, mobility scooters, prams and visually or physically impaired people. For pedestrian and/or shared service areas, any amenity must be sited so as to provide sufficient width (using the above clearance guidelines if applicable) for all users to pass freely.

Additional width may be required in areas where there is a high volume of pedestrian traffic or where there are a number of permanent obstructions such as trees or other street furniture.

The extent of the amenity area **must be clearly defined**. The Council will require the use of metal studs or similar set into the ground to delineate the area, where appropriate - particularly for tables, chairs and barriers.

Means of Enclosure

In relation to the placing of tables and chairs on the highway, the Council will expect (in most cases) that the amenity area will be enclosed to demarcate the recognised area in order to:

- contain the tables and chairs so that the area is distinguishable to other pavement users;
- prevent “drifting” of the furniture or barriers outside of the authorised area; and
- to assist blind and visually impaired pedestrians.

Other uses for such enclosures may also include delineating areas for patrons who wish to smoke or to control queues of customers waiting to gain access to the premises.

Barriers or similar structures must have solid horizontal bars/elements at appropriate height(s) above ground level so as to be detectable by a stick (“tapping rail”).

Barriers must be a contrasting colour to any furniture and/or pavement to aid visual identification.

The height of any barrier must not exceed 1.5 metres unless otherwise authorised by the Council.

The means of enclosure must be removed from the highway when outside of the times authorised by the permission. The enclosure will therefore need to be lightweight in construction and portable but sufficiently robust so as to prevent them blowing over in high winds or from being pushed over by people.

The design of any barrier(s) should complement the character of the surrounding area and the Council may require the enclosure to be of a specific design in order to maintain continuity along the street frontage.

Where any permission is granted so as to allow patrons from pubs and clubs etc to smoke outside, that amenity area will need to be closely managed by the licence holder to ensure that patrons using the area do not overspill or exceed the recognised area. Receptacles for smoking litter will need to be provided.

Furniture Design

Tables and chairs should be of a high quality and robust. They should be separate and of a design to allow use by disabled or wheelchair users and their design, materials and colour should complement the area they are used in. Care must be taken in ensuring that the feet or resting points of tables and chairs do not create pressure points which could damage the road or footpath surface. (Repairs to such surfaces will be at the permit holder’s expense) White plastic or garden furniture/wooden benches would not normally be considered appropriate.

Different criteria may apply to conservation areas where furniture should preserve or enhance the character and appearance of the area.

Planters must be light enough to be removed on a daily basis but stable enough to resist movement due to extreme weather conditions and must not be allowed to become litter receptacles. They should not extend beyond the amenity area or stain the paving or road surface. They should be well maintained with a vibrant array of bedding plants or flowers. They should be of a contrasting colour to the surrounding area so they do not become a tripping hazard to people with a visual impairment.

Parasols must not extend beyond the amenity area and their lowest point should be 2 metres from the ground. They must be secured at the base so as not to blow over or away in winds

and, as with tables and chairs, must be robust and high quality. Advertisements will only be permitted on them at the discretion of the Council and planning consent may be required.

Within reason, all furniture and parasols should be neutral or light in colour.

Planning consent may also be required for canopies, awnings or blinds, which are attached to buildings.

If patio heaters of any sort are proposed, the application must be accompanied by a full description of the type of heater together with a detailed risk assessment to include energy efficiency and an environmental impact statement. It is the responsibility of the applicant to notify his/her insurers of the use of such equipment and approved in accordance with the terms of the policy of public liability insurance.

Environmental Implications and Other Considerations

The amenity area must be kept clean and litter free at all times. Evidence of a scheduled cleaning record shall be provided upon request. Persons must also ensure that litter straying into neighbouring areas is removed. Ashtrays or similar receptacles must be provided in amenity areas where smoking takes place.

Serious consideration should be given to the division of amenity areas, where space permits, into smoking and non-smoking sections, with each section clearly marked.

External public address systems will not be permitted. The playing of live or recorded music may also be subject to statutory control and you should make your own enquiries accordingly.

Applicants will need to address and control any potential nuisance(s) caused by their patrons. Inappropriate behaviour may lead to a formal notice being given to require an improvement.

It is vitally important that the needs of other persons are fully considered. This includes neighbours, nearby residents, passers-by, emergency services, deliveries, utility companies requiring access to manholes, gas and water mains, access to hydrants by the fire service together with refuse collections. Market and event vehicles must be also be considered.

The council, as the local licensing authority, encourages applicants to consider their operating schedules when providing outside eating/drinking and/or designated smoking areas.

The Licensing Act 2003 provides a regime for the control of the sale or supply of alcohol, regulated entertainment and late night refreshment. Whilst the consumption of alcohol is not a licensable activity, licensees should be alive to the need to seek advice and apply for variations to incorporate "additional" areas where a licensable activity is likely to take place.

Although licensing law is not the primary mechanism for dealing with the general control of persons away from licensed premises; licensees do have a duty of care for the behaviour of persons immediately outside or adjacent to their premises. Licensees should be alert to the prevention of public nuisance(s) which, unless satisfactorily controlled, could lead to a review of an existing authorisation by responsible authorities or other persons.

No "goods" such as foodstuffs, clothing, shoes or any products associated with a retail premises shall be permitted on the highway within the designated precinct areas.

Safety

It is the responsibility of the applicant/amenity holder to ensure that any equipment complies with all relevant legislation and statutory requirements whether this be food hygiene, health & safety, food safety and alcohol sales requirements where applicable.

Holders will be responsible for securing insurance cover and for indemnifying the Council against public liability claims from members of the public arising from the provision of any amenity on the highway.

Any damage to Council property caused as a result of the provision of the amenity, will be repaired by the Council with all costs recharged to the business in question.

“A” Boards or Advertising Boards

The previous policy of the Council was to refuse outright the recognised use of “A Boards” and other advertising structures as amenities on the highway. This was because of historical evidence of wilful obstruction to the highway together with a "creeping culture" of A boards appearing on the highway without lawful permission. Organisations such as the The RNIB favour a complete ban on the use and proliferation of A boards.

However, attractive and well positioned A boards may help to promote local businesses and traders. The Council has now decided to permit and recognise the lawful use of A boards in low risk areas and away from any identified "stress" areas. This reflects also on the decision made by the County Council in 2012 to permit individual consideration of A board licensing.

This relaxation is subject to clear guidelines to ensure compliance with the law and to ensure the safety and convenience of the public, particularly the visually impaired and wheelchair users.

Stress Areas

A boards can cause significant obstruction if positioned poorly - particularly to those persons with mobility and visual impairment problems. They can also be used as weapons for crime and vandalism purposes.

Accordingly, the council has identified certain "stress areas" where the presumption will be to not grant amenity permissions for A Boards whatsoever. In all other cases, each application will be considered on merit.

The stress areas are currently identified as:

- Any highway within the prescribed cumulative impact special policy area relating to the night time economy for the city centre and Guildhall Walk to include.¹ :
 - Alec Rose Lane
 - Cambridge Road
 - Commercial Road

¹ *Adopted statement of licensing policy for period January 2011 until January 2016*

- Guildhall Square
 - Guildhall Walk
 - Hampshire Terrace
 - King Henry 1st Street
 - Stanhope Road
 - St Michaels Road
 - White Swan Road
 - Willis Road
 - Wiltshire Street
- Albert Road
- Commercial Road, Crasswell Street (from Commercial Road to Paradise Street) Arundel Street, Palmerston Road and Cosham High Street Precinct environs²
- Cosham High Street from Wayte Street south to the Train Station
- Edinburgh Road
- London Road, Kingston Road and Fratton Road
- Marmion Road
- Osborne Road
- Palmerston Road south to the junction with Clarence Parade
- Station Road
- Within 5 metres of any significant road junction on recognised arterial routes (in order to prevent blocked vision for motorists, cyclists, pedestrians and visually impaired persons) and to include:
 - Albert Road
 - Copnor Road
 - Eastney Road
 - Highland Road
 - Milton Road
 - Northern Parade
 - Victoria Road North
 - Victoria Road South

Compliance and Enforcement

Any advertising structure that creates a nuisance, breach of advertising legislation or presents a danger are likely to be removed immediately by the Council. This may involve the serving of a formal notice requesting removal before seeking a court order for removal and disposal where necessary. However, “A Boards” or other advertising structures that constitute an “immediate danger” will be removed from the highway and either returned to the owner, if possible, or kept and later destroyed.

Any “A Boards” or other advertising structures removed and stored by the Council will be kept for 28 days before being disposed of. The Council may seek to recharge any expenses incurred in removing and storing “A Boards” or other advertising structures to the owner.

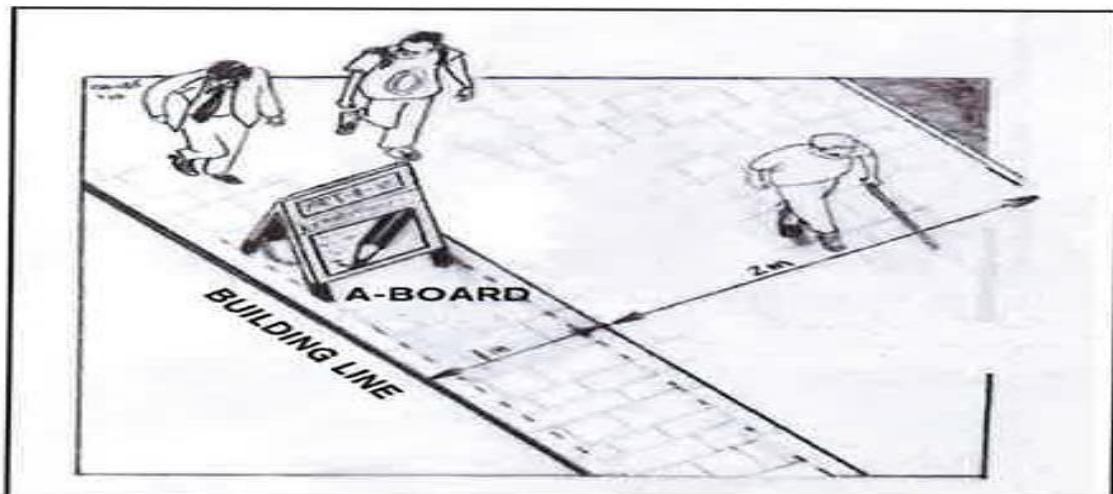
A Board Design/Size/Style Requirements

² Commercial Road means from the ABC roundabout south to the Train Station. **NOTE,** the City Centre or Town Management team MAY consider an application for A board permission in the middle of a designated precinct area provided a minimum of 2 metres clearance each side is maintained.

- ✓ Must be of a standard size normally (600x1100 mm) and a maximum of 1.1 metres high
- ✓ Must be of a quality construction – wood preferred for most locations but not to exclude other good quality materials such as stainless steel.
- ✓ **Flag, rotating, swinging or storm board signs will NOT be permitted**
- ✓ **A boards made of glass or mainly of glass construction will NOT be permitted**
- ✓ Should be professionally designed and well maintained with sign writing/printed or painted material (not normally hand written except for well presented "chalk boards")
- ✓ Should be temporary in nature and removable
- ✓ A maximum of one "A Board" per business
- ✓ Should be colour contrasting to differentiate between the business frontage and the pavement

Location of "A" Boards or other advertising structures

- ✓ Must be placed against the building line while maintaining a minimum of 2 metres "unobstructed zone". Additional width may be required in areas where there is a high volume of pedestrian traffic or where there are a number of permanent obstructions such as trees or street furniture (such as bus stops, benches, cycle stands, litter bins etc.)



- ✓ Must be placed outside own business
- ✓ Must not cause a visual obstruction to pedestrians or drivers
- ✓ Must be removed when the premises are closed or when weather conditions such as high winds could make the boards unstable
- ✓ Must not be fixed to street furniture to include lighting columns, traffic lights, bollards, safety barriers, seats or any other fixed items

Other considerations

All businesses are legally liable for any claims from damage or injury, caused by displaying “A Boards” or other advertising structures on the highway. Compliance with these guidelines will not negate the need to obtain Public Liability insurance cover of £5 million for any such claims.

In the event of an emergency, or to allow access to pipes and cables, “A Boards” may need to be removed to get access to the highway.

General Information

- Any permission will normally be issued for a period of 12 months from the date of first grant or for such shorter trial period as may be prescribed.
- Any permission for placing amenities on the highway may be subject to general or specific conditions.
- Hours of use will vary according to location and type of amenity permission. Generally speaking goods, produce etc outside shops must be removed from the highway at the premises closing times and tables, chairs. A boards etc. will not be permitted on the highway after 2100 hours daily.
- Permissions may be transferred and or varied after consideration and subject to payment of any prescribed fees.

Fees and Charges

Fees are determined having regard to the proposed type of amenity (whether goods on the highway or tables and chairs etc) and the proposed size of the amenity area.

The fees for amenity permissions are reviewed by the council on a regular basis. The fee **MUST** accompany any application. The link to the current fees is shown below:

<https://www.portsmouth.gov.uk/ext/documents-external/lic-general-licensing-fees---january-2016.pdf>

NOTE: If your application is subsequently refused, you will be refunded the additional area fee but the initial application fee will be retained.

Application Process - Guidance

Procedure for applying for a highway amenity permission under section 115 (E-K) of the Highways Act 1980

The application process involves both statutory and non-statutory procedures and requirements. Applicants must have regard to the guidance contained in this policy document as failure to supply the relevant information may mean that your application will be rejected.

- An amenity on the highway permission can be applied for at any time.
- You are advised to read this policy carefully and ensure you fully understand the requirements before you proceed with an application.
- Complete in full the application form enclosed with this guidance. Tell us if you are applying as a person, in partnership or on behalf of a company.
- Attach a plan* and representative colour photographic images of any objects or structures to be utilised showing the dimensions and extent of the amenities/structures to be placed on the highway and:-
 - i) Indicate the position in relation to your own premises;
 - ii) The position in relation to any other premises; and
 - iii) The position of nearby street furniture etc, such as lamp columns, trees, fire hydrants, post boxes, litter bins and dropped kerbs.

***NB. The Council will supply applicants with an A3 template to enable the production of a scale drawing showing the position of the proposed amenities in relation to those matters indicated in i - iii above.**

- Provide evidence of Public Liability Insurance Cover to the sum of £5 million should a permission be granted or renewed.
- On receipt of your application the proposals will be checked against the policy guidelines. Further details may be needed and obtained from you at this stage.
- You will be required to display a notice for 28 consecutive days which must be clearly visible on the outside of your premises outlining your proposals and inviting representations from any interested parties. This notice will be supplied to you by the council. We will visit your premises to ensure the notice is displayed satisfactorily. It is your responsibility to ensure that the notice is continuously displayed for 28 days. Failure to do so may lead to the consultation process starting afresh.
- The Council may consult with other bodies which may include, but is not limited to:-
 - ✓ Ward Councillors
 - ✓ The Highway Authority
 - ✓ Police
 - ✓ Fire and Rescue Service
 - ✓ Development Service

- ✓ PFI Contract Manager
- ✓ Traffic and Road Safety Service
- ✓ City Centre Manager
- ✓ Visitor and Tourism Manager
- ✓ Local residents and/or businesses where appropriate
- ✓ Access & Equality advisor
- ✓ Disability Groups

A period of 28 days will be allowed for consultation with the above bodies.

- You will be advised if there are any objections to your application or it fails to meet the requirements of the policy. It may be possible to revise your application to negate any objections and to enable your application to be approved by licensing staff.
- If objections are not withdrawn in respect of the application and/or amendments are not appropriate then the application will be referred to a panel of councillors convened from the Council's Licensing Committee for final determination.
- You will have a right of attendance at the committee hearing and may be represented. The committee will normally make their decision at the end of the hearing and this will be communicated in writing to you. In some cases they may adjourn making a final decision for a day or two in order to consider further technical advice.

Right of Appeal

There is no right of appeal against a decision of the Council to refuse to grant or to suspend, refuse to renew or to revoke an existing permission. Likewise, there is no appeal against any conditions imposed.

Planning Consent

It will not normally be necessary to obtain planning permission for amenities on the highway provided that the main existing premises have appropriate planning consent for the use of the premises.

However, planning permission, listed building consent or conservation area consent may be required if there is any change to the building frontage or signage. Permanent structures on the highway will not be permitted.

A fee will be payable should planning permission be required, the level of which will be dependent upon the nature of the application. Further advice can be obtained on the Council's planning web pages at <https://www.portsmouth.gov.uk/ext/development-and-planning/planning/pre-application-planning-advice.aspx>

If your proposal requires planning permission you will normally be expected to have planning permission in place prior to making an application for an amenity licence. Advertising on the highway will generally require advertisement consent.

Contact Details

Licensing Service
Portsmouth City Council
Civic Offices
Guildhall Square
Portsmouth
PO1 2AL

Telephone: 023 9283 4572
Fax: 023 9283 4811
Email: Licensing@portsmouthcc.gov.uk
Website: www.portsmouth.gov.uk

References

- Local Government (Miscellaneous Provisions) Act 1982
- Highways Act 1980
- Equality Act 2010
- Local Authorities (Functions and Responsibilities) (Amendment No 3) (England) Regulations 2004
- RNIB - A boards - "quick wins for local authorities"
- RNIB - Street Space
- RNIB - Street Furniture
- Guide Dogs - The Streets Ahead Survey
- NFBUK - Access for blind people in towns
- Hampshire County Council - A Board policy

Standard Conditions

1. The holder shall provide Third Party Liability Insurance to the amount of £5,000,000 to indemnify the Council against all claims for damage or injury arising out of the use of the highway and shall provide the City Council with a copy of the certificate of insurance on request.
2. Adequate provisions shall be provided for the disposal of litter.
3. Any damage sustained to the highway resulting from the amenities being placed on the highway in accordance with this permission shall be repaired at the expense of the holder to the requirements and satisfaction of the Council.
4. The amenities must be kept strictly within the designated area marked out by the Council and must not encroach on the adjoining or adjacent businesses or properties, or restrict the public thoroughfare to any extent where it would become a nuisance.
5. No additions or alterations to the highway amenities shall be made without the prior written consent of the Council by way of a variation application.
6. The maximum height of any barrier shall not exceed 1.5 metres.
7. In areas where street illumination is sparse, the amenities shall be adequately illuminated.

8. When the establishment for which the permission was granted is closed for business, the amenities shall be removed from the highway, unless previously agreed by the council.
9. Any authorised officer of the Council may require the holder to comply with any order or directive to prevent a breach of these conditions and/or the special conditions shown below.
10. The Council reserves the right to require the removal of amenities to allow for:
 - maintenance
 - emergencies
 - public events; exhibitions and markets
 - access
 - any other reasonable cause

As much notice as possible will be given but there will be occasions when this will be unavoidably minimal.

11. Items displayed or used in the designated area should be of sufficient solidity or properly secured to prevent them falling or being blown onto the highway.
12. The holder of the amenity permission shall prominently display the prescribed amenity approval notice from the frontage of the premises in order to be plainly visible to the public. This notice MUST be returned to the council in the event of a permission being suspended, revoked or not renewed.

Special Conditions (These conditions may be attached as and when considered necessary).

- a. The sale of alcohol from the premises shall be in compliance with an authorisation granted by Portsmouth City Council, as the Licensing Authority, in accordance with the Licensing Act 2003.
- b. All amenities (tables and chairs etc) shall be removed from the highway as indicated on the licence, unless previously agreed by Portsmouth City Council.
- c. Signs shall be displayed advising that drinks are not permitted to be taken outside the amenity area.
- d. The furniture design shall be approved by the Council.
- e. The amenity area shall be maintained in a clean and litter free condition at all times.
- f. The amenity floor area shall be cleaned twice weekly using a detergent to the satisfaction of the Council.
- g. No recorded or live music shall be played into the designated amenity area.
- h. The holder is required to keep tables, chairs, benches etc in good decorative order.

Licensing Service
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You can get this
Portsmouth City
Council information
in large print, Braille,
audio or in another
language by calling
023 9283 4572.



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