

<b>Committee(s):</b>	<b>Date(s):</b>	<b>Item no.</b>
Licensing Committee	18 July 2011	
Planning and Transportation Committee	19 July 2011	
<b>Subject:</b> Licensing of Tables and Chairs	<b>Public</b>	
<b>Report of:</b> Director of Environmental Services	<b>For Decision</b>	
<p style="text-align: center;"><b><u>Summary</u></b></p> <p>At the Licensing Committee held on the 18 June 2011, a report was submitted detailing the current process involved following receipt of an application for a Tables and Chairs (T&amp;C) licence and the roles performed by the Corporation's licensing and planning services in dealing with such applications.</p> <p>Whilst the two services work closely together to minimise inconsistencies (e.g. trading hours), the Committee considered it sensible to ask if the process could be further streamlined and whether a change of responsibility from the Planning and Transportation Committee to the Licensing Committee would enhance the service.</p> <p>The report sets out the possible reasons for a change, but concludes there is no advantage to it. It further proposes updating the current guidelines.</p> <p><b>Recommendations</b></p> <ul style="list-style-type: none"> <li>• That being the Committee aligned with achieving the best amenity provision on an area of highway or City walkway and given the very limited number of appeals, tables and chairs licensing remains the responsibility of The Planning and Transportation Committee.</li> </ul>		

## **Main Report**

### **Background**

1. An individual, or corporate body, wishing to place tables and chairs on the public highway including a City Walkway (the ‘highway’), must first seek the necessary licence under the Highways Act 1980. The view has previously been taken that planning permission is not normally required to place tables and chairs on the highway.
2. The City Planning Officer’s (CPO) report amending delegations and Director of Environmental Services (DES) report concerning Day Time economy and the Street Scene to Planning and Transportation Committee on 1 July 2008, resolved that the administration and enforcement of tables and chairs on the highway be transferred from CPO to DES and that DES or an appropriate delegated officer assume responsibility for this function.
3. This was agreed to ‘join up’ and enhance efficiency for the administration and enforcement of tables and chairs matters.
4. The Planning and Transportation Committee is the Committee responsible for tables and chairs and the Licensing Team in the Department of Environmental Services have, in liaison with Planning Officers, taken responsibility for the operational administration of this function. Tables and chairs licence applications may in some circumstances require planning permission, subject to counsel’s opinion; however, most tables and chairs applications arrive separately from any planning process and are also, usually, separate from the premises licence process although there is no reason, except the wishes of the businesses concerned, why these should not be applied for concurrently. (However, the determination procedures for each are distinct, and the outcome of one cannot predetermine the outcome of another). In 2010 there were 48 new premises applications, but only one requested a T&C licence simultaneously and three applied subsequently.
5. Applications involve considerable resources in consulting and negotiating with other City of London Corporation departments as well as external individuals and organisations. This is primarily in respect of highway matters such as provision of and access to services, traffic and pedestrian management and Street Scene issues as well as potential public safety and nuisance matters such as obstruction and noise. A typical small,

uncontentious tables and chairs application currently takes approximately three months to process. However, this timescale can be considerably extended if there is any unresolved concern with any consultee, whether internal or external to the City of London Corporation.

6. Licences are normally dealt with through delegated powers to officers either by grant of the tables and chairs licence with conditions or refusal of the application having regard to existing internal guidelines (discussed further below). The relatively small size of most applications, and their normally uncontentious nature, has meant that during the last decade, approvals or refusals have been subject to only two appeals to Planning and Transportation Committee regarding delegated officer decisions, one in 2000 and one in 2008, both of which supported the delegated officer decisions.
7. The T&C licensing process is as follows. For each application, we must consult with all frontagers, that is a person who occupies or owns a property adjoining the part of the highway on which tables and chairs are to be put. A similar consultation is also carried out concurrently with those neighbours who may be 'materially affected' by the application. This is not defined but is usually taken to be neighbours either over, or to either side of, the site of the application, although there is discretion to make the consultation wider if it appears appropriate for a particular application. A T&C licence cannot be granted where certain frontagers withhold their consent, but consent may not be unreasonably withheld. If the responsible officer considers consent has been unreasonably withheld, that is, where an objection is maintained (irrespective of all negotiated agreements and mitigating conditions that appear to address such concerns) the issue must be referred to arbitration. The arbitrator may be appointed by agreement but failing that, by selection from a list produced by the Chartered Institute of Arbitrators. Costs are borne by the City.
8. We have recently had the first case that has been dealt with by arbitration, where those frontagers allegedly materially affected by the potential addition nearby of tables and chairs were deemed to have been unreasonably withholding their consent by the arbitrator, subject to additional conditions imposed by the arbitrator.

## **Current Position**

9. There are 102 establishments in the City of London for which tables and chairs licences are granted or under consideration of which 60 are licensed premises for the purchase of alcohol under the Licensing Act

2003. The remaining 42 are associated with coffee shops/sandwich bars. All current licences are renewed annually with the same consultation processes as for an initial application. The number of new applications was 16 in 2010 with a further 14 to date this year. As an indication of the times for which they were granted, of 48 applications to date this year, twelve were to 11pm or later, none has been issued beyond midnight. With present arrangements it is usual that applications for tables and chairs are made separately, and subsequent to, applications for premises licences. If planning approval is necessary, it is likely that the planning application would be dealt with first, prior to any separate tables and chairs licence decision.

10. Policy and guidelines for the issue of tables and chairs licences were agreed by the then Planning and Communications Committee on 26 April 1983. They have not been formally reviewed or revised since then. Recent cases have shown that they need to be updated to keep abreast with changing circumstances in the City, and this is proposed.
11. To decide if T&C can be permitted, officers use an internal set of guidelines based on these approved guidelines. These are attached (and it is noted that they too need updating and then publishing). Issues which would be considered include the space remaining for pedestrians, amenity use for public and patrons, access for businesses and people, access to services and provision of services in the highway, street scene aesthetics such as type and amount of equipment, visual clutter (e.g. barriers, umbrellas and heaters) and impairment of traffic sight lines. Environmental concerns include issues regarding cleansing, or the prevention of persons congregating outside of the T&C area, and the risk of additional noise.
12. Once the tables and chairs licence is granted, almost all complaints or concerns received are those concerning the impact on the environment such as noise, litter, public safety and obstruction from rowdy users. However, all of these have related to tables and chairs locations associated with the purchase of alcohol authorised by a premises licence under the Licensing Act 2003. There is therefore an additional opportunity for these concerns to be raised in relation to review of the premises licence. No such complaint has been received in respect of non-licensed premises.

## **Discussion**

13. Members of the Committee were keen to see if there was any advantage to moving responsibility to the Licensing Committee. This was in respect

of co-ordinating applications for licences. However, 40% of T&C applications do not involve premises that have a premises licence. Nor is there any significant indication that businesses with a premises licence require a T&C licence: if they do, any overlap could be dealt with by encouraging concurrent applications (subject to the requirement to determine different applications separately, with the outcome of one application not predetermining the decision on another) but the timescales for determining applications are also different.

14. Committee involvement in the process is very low, with few appeals, and when they are required the matters to be considered are as akin to planning considerations as they are to licensing matters, and will be decided by arbitration without there necessarily being any further reference to Members. Moreover, the trend is for planning issues to become more important, as the move to more external seating and associated equipment raises issues of the appearance and permanence of equipment and greater street usage, to the point where the City is having to review the extent to which T&C licencing can be extended without applications needing planning approval (as in some other London boroughs). On noise issues, experience shows that these have never occurred in relation to unlicensed premises (which affords an opportunity to raise concerns in connection with the application and review of the premises licence).

## **Proposals**

15. I therefore propose that responsibility for T&C licencing remains as it is. However, there is a clear need to update the guidelines, to reflect current practice and more recent legislation (like the Licensing Act), and also to check again the need for planning permission to be required for T&C application to reflect the more extensive and permanent nature of some applications.

## **Financial and Risk Implications**

16. There is no financial risk or human resource implications associated with this report.

## **Legal Implications**

17. In preparing policy and criteria it should be noted that the Highway Authority has a duty under s. 130 of the Highways Act 1980 to assert and protect the rights of the public to the use and enjoyment of the highway or

City Walkway. This has to be balanced against the public benefits that could be derived by placing amenities on the public highway. Due regard must also be had to other relevant considerations including whether there is any interference with property or family life, and if so, whether it is proportionate to the public benefit (Human Rights Act 1998), and any Equalities Act considerations for example in terms of reduced access or safety.

## **Strategic Implications**

18. Any decision taken needs to have due regard to the City of London's Visitor strategy which was agreed by the Policy & Resources Committee on 16 September 2010. The aims of the strategy are to develop a distinct identity for the City; to promote this identity to visitors and the travel trade; to build the cultural dimension of the City's attractiveness as an international finance centre; and to enhance the quality of the visitor experience.
19. The strategy is structured around five themes: a global city; a top-quality visitor experience; a sustainable and inclusive City; professionalism at every level; and industry support and partnership. The most relevant to this report being 'a top quality visitor experience'.
20. Regard should also be had to The City Together Strategy the relevant parts of which are:

(i) protects, promotes and enhances our environment

Goal: To protect and enhance the built environment of the City and its public realm.

Our medium term priorities are:

- To encourage walking and cycling safely
- To improve public transport and the pedestrian environment
- To ensure that buildings and public spaces are designed to promote health, reduce crime and make people feel safe

(ii) is vibrant and culturally rich

Goals:

- To encourage greater diversity in cultural and leisure activities
- To facilitate the opportunity for exemplary, innovative and sustainable design and implementation of the built environment which

respects and enhances the distinctive character of the City whilst maintaining and improving accessibility

## **Consultees**

21. The City Planning Officer and Comptroller & City Solicitor have been consulted and their comments have been incorporated into the body of this report.

## **Background Papers:**

*Planning and Communication Committee 26 April 1983 Non Public report 16 regarding Tables and Chairs on Public Footways and City Walkways*

*Planning and Transportation Committee (and others) 1 July 2008 report from DES regarding The Day Time Economy and the Street Scene*

*Planning and Transportation Committee (and others) 1 July 2008 report regarding Delegated Powers to the City Planning Officer*

*Licensing Committee 18 April 2011 DES report Licensing Processes and the links with Planning*

*Tables and Chairs on Public Footways and City Walkways main report Planning and Communication Committee 26 April 1983*

*The Day Time Economy and the Street Scene report from DES, Planning and Transportation Committee 1 July 2008*

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