

# PLACING OBJECTS

# OR STRUCTURES ON THE HIGHWAY

**(HIGHWAYS ACT 1980 PART III)**

**FOR THE PURPOSE OF PROVIDING REFRESHMENTS**

Scope

The placing of objects or structures on the highway is controlled by the provisions of Part VIIA of the Highways Act 1980 and applies to all public highways. Whatever the position with regard to the ownership of the land, the issue that must be determined is whether the land forms part of the highway over which the public has a right to pass or repass, or whether it is a private area over which the public has no right of access accept by consent.

In the case of privately owned land, if the public has, without interruption, for a period of 20 years enjoyed the right to pass or repass then the land is deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to so dedicate it. Consent is therefore required.

The onus is on the landowner to produce evidence to rebut any deemed dedication. If no substantiated rebuttal or formal application for consent is made, the Council will perform its statutory duty to protect and assert the rights of the public over the highway and take action to prevent any unauthorised obstruction.

An extract of Section 31 of the Highways Act 1980 is attached at Appendix A.

Licence Periods

**The days and times are at the discretion of the Dover District Council/.**

Procedure

1. The Application Form should be completed and returned with a site plan clearly showing the dimensions of the area of highway on which furniture is to be sited and the proposed layout of the furniture together with the Requisition (Appendix C) requiring details of all persons with an interest in the applicant's property. If you wish to discuss the site layout, please contact the Highways Management Unit (extension 2440).

2. Administration to:-

(i) Consult the Highways Management Unit, the local Police and Chamber of Trade before referring the matter to the Council for consideration in principle and

(ii) Determine all those people who have an interest in premises that are materially affected by the proposal.

3. If an application is approved in principle, local consultation will take place allowing 28 days for representations to be made.

4. If any representations are received details, will be forwarded to the applicant for comment and the matter will then be referred back to the Council for further consideration.

5. If no objections are received or if approval is given after consideration of objections, the licence will be prepared.

Enforcement

The Council will keep the operation of a licence under review and any failure to comply with licence conditions could result in the Council carrying out rectification works and recharging the cost to the licensee or even terminating the licence.

 **HIGHWAYS ACT 1980 - PART III**

**Dedication of way as highway presumed after public use for 20 years**

**31.** (1) Where a way over any land, other than a way of such a character that use of it by the public could not give rise at common law to any presumption of dedication, has been actually enjoyed by the public as of right and without interruption for a full period of 20 years, the way is to be deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it.

(2) The period of 20 years referred to in subsection (1) above is to be calculated retrospectively from the date when the right of the public to use the way is brought into question, whether by a notice such as is mentioned in subsection (3) below or otherwise.

(3) Where the owner of the land over which any such way as aforesaid passes:-

(a) has erected in such manner as to be visible to persons using the way a notice inconsistent with the dedication of the way as a highway, and

(b) has maintained the notice after 1st January 1934, or any later date on which it was erected,

the notice, in the absence of proof of a contrary intention, is sufficient evidence to negative the intention to dedicate the way as a highway.

(4) In the case of land in the possession of a tenant for a term of years, or from year to year, any person for the time being entitled in reversion to the land shall, notwithstanding the existence of the tenancy, have the right to place and maintain such a notice as is mentioned in subsection (3) above, so, however, that no injury is done thereby to the business or occupation of the tenant.

(5) Where a notice erected as mentioned in subsection (3) above is subsequently torn down or defaced, a notice given by the owner of the land to the appropriate council that the way is not dedicated as a highway is, in the absence of proof of a contrary intention, sufficient evidence to negative the intention of the owner of the land to dedicate the way as a highway.

(6) An owner of land may at any time deposit with the appropriate council:-

(a) a map of the land on a scale of not less than 6 inches to 1 mile, and

(b) a statement indicating what ways (if any) over the land he admits to have been dedicated as highways;

and, in any case in which such a deposit has been made, statutory declarations made by that owner or by his successors in title and lodged by him or them with the appropriate council at any time:-

(i) within six years from the date of the deposit, or

(ii) within six years from the date on which any previous declaration was last lodged under this section,

to the effect that no additional way (other than any specifically indicated in the declaration) over the land delineated on the said map has been dedicated as a highway since the date of the deposit, or since the date of the lodgement of such previous declaration, as the case may be, are in the absence of proof of a contrary intention, sufficient evidence to negative the intention of the owner or his successors in title to dedicate any such additional way as a highway.

(7) For the purposes of the foregoing provisions of this section "owner", in relation to any land, means a person who is for the time being entitled to dispose of the fee simple in the land; and for the purposes of subsections (5) and (6) above "the appropriate council" means the council of the county [metropolitan district] or London borough in which the way (in the case of subsection (5)) or the land (in the case of subsection (6)) is situated or, where the way or land is situated in the City, the Common Council.

(8) Nothing in this section affects any incapacity of a corporation or other body or person in possession of land for public or statutory purposes to dedicate a way over that land as a highway if the existence of a highway would be incompatible with those purposes.

(9) Nothing in this section operates to prevent the dedication of a way as a highway being presumed on proof of user for any less period than 20 years, or being presumed or proved in any circumstances in which it might have been presumed or proved immediately before the commencement of this Act.

(10) Nothing in this section or section 32 below affects [section 56(1) to the Wildlife and Countryside Act 1981 (which provides that a definitive map and statement] are conclusive evidence as to the existence of the highways shown on the map and as to certain particulars contained in the statement) [ . . . ]

(11) For the purposes of this section "land" includes land covered with water.