

CYNGOR SIR CEREDIGION COUNTY COUNCIL

Report to: Cabinet

Date of meeting: 3rd September 2024

Title: Oversail Licences under s.177 Highways Act 1980

Purpose of the report: To introduce a Highways & Environmental Services and Legal Services fee for Oversail Licences

For: Decision

Cabinet Portfolio and Cabinet Member:

Councillor Keith Henson, Cabinet Member for Highways and Environmental Services and Carbon Management

Councillor Matthew Vaux, Cabinet Member for Partnerships, Housing, Legal and Governance and Public Protection

Introduction

S.177(1) of the Highways Act 1980 (“the Act”) states:

“(1) No person shall—

(a) except in the exercise of statutory powers, construct a building over any part of a highway maintainable at the public expense (whether it is intended to span the highway or not), or alter a building so constructed, without a licence granted under this section by the highway authority for that highway or otherwise than in accordance with the terms and conditions of a licence so granted;

(b) use a building so constructed or altered in pursuance of a licence so granted otherwise than in accordance with the terms and conditions thereof:

and any person who contravenes any provision of this subsection is guilty of an offence and liable to a fine not exceeding [level 5 on the standard scale]; and if the offence is continued after conviction, he is guilty of a further offence and liable to a fine not exceeding £50 for each day on which the offence is so continued.”

A licence issued by a Highway Authority pursuant to S177 HA 1980 is known as an Oversail licence.

The Highway Authority is able to include such terms and conditions in an Oversail licence as it sees fit (s.177(2)) and such a licence is binding on successors in title to the property granted the licence.

In addition, under s.177(3), the Highway Authority is able to charge a reasonable sum in respect of legal or other expenses incurred in connection with the grant of the licence and an annual charge of a reasonable amount for administering the licence.

The full wording of s.177 is attached as Appendix 1.

Current position

There is no current Cabinet approved fee in relation to oversail licences (neither a Legal Services fee nor a Highways & Environmental Services fee).

Requests for such licences are few and far between and the last one granted was in relation to the Mill Street Development in Aberystwyth back in 2016.

Legal Services are currently instructed by Highways on two oversail licences.

Proposal

It is proposed that a fee be introduced to cover the time spent by Legal Services and Highways & Environmental Services in connection with the grant of such licences.

Legal Services estimate around 5 hours of Solicitor time per case and therefore propose a fee of £471 to match the approved Cabinet fee for Licences to Occupy and Easements already in the 2024/2025 Fees and Charges.

Highways & Environmental Services estimate 6 hours of Officer/Engineer's time per case and therefore propose a fee of £500 to process this licence.

Wellbeing of Future Generations:

Has an Integrated Impact Assessment been completed? If, not, please state why.

No, this proposal will not result in a change to service users or residents.

Summary of Integrated Impact Assessment:

Long term: -
Collaboration: -
Involvement: -
Prevention: -
Integration: -

Recommendation(s):

Cabinet to APPROVE that:

a) Highways & Environmental Services charge a fee of £500; and

b) Legal Services charge a fee of £471;

for officer time spent in connection with grant of Oversail licences under s.177 HA 1980, effective from 1/9/24.

Reasons for decision:

Cost recovery.

Overview and Scrutiny:

N/A

Policy Framework:

N/A

Corporate Well-being Objectives:

Boosting the Economy, Supporting Businesses and Enabling Employment

Finance and Procurement implications:

Positive impact on budget through receiving additional income

Legal Implications:

N/A

Staffing implications:

N/A

Property / asset implications:

N/A

Risk(s):

N/A

Statutory Powers:

S.177(3) Highways Act 1980

Background Papers:

None

Appendices:

Appendix 1 – S.177 Highways Act 1980

Corporate Lead Officer:

Rhodri Llwyd: CLO – Highways & Environmental Services

Elin Prysor: CLO - Legal & Governance Services

Reporting Officer:

Phil Jones: Corporate Manager – Highways Services

Louise Harries: Senior Lawyer – Non-contentious (Property)

Date:

26/07/2024

APPENDIX 1

Highways Act 1980

1980 CHAPTER 66



Highways Act 1980 (1980 c 66)

UK Parliament Acts > H > HH-HN > Highways Act 1980 (1980 c 66) > Part IX Lawful and Unlawful Interference with Highways and Streets (ss 130-185)

177 Restriction on construction of building over highways

(1) No person shall—

(a) except in the exercise of statutory powers, construct a building over any part of a highway maintainable at the public expense (whether it is intended to span the highway or not), or alter a building so constructed, without a licence granted under this section by the highway authority for that highway or otherwise than in accordance with the terms and conditions of a licence so granted;

(b) use a building so constructed or altered in pursuance of a licence so granted otherwise than in accordance with the terms and conditions thereof:

and any person who contravenes any provision of this subsection is guilty of an offence and liable to a fine not exceeding [level 5 on the standard scale]; and if the offence is continued after conviction, he is guilty of a further offence and liable to a fine not exceeding £50 for each day on which the offence is so continued.

(2) Subject to subsections (3) and (4) below, a licence under this section may contain such terms and conditions, including terms and conditions with respect to the construction (including the headway over the highway), maintenance, lighting and use of the building, as the highway authority think fit; and any such term or condition is binding on the successor in title to every owner, and every lessee and occupier, of the building.

(3) No fine, rent or other sum of money is payable in respect of a licence granted under this section except—

(a) a reasonable sum in respect of legal or other expenses incurred in connection with the grant of the licence; and

(b) an annual charge of a reasonable amount for administering the licence;

and any sum payable by virtue of paragraph (a) above is recoverable from the applicant for the licence and any sum payable by virtue of paragraph (b) above is recoverable from the owner of the building.

(4) No such licence shall authorise any interference with the convenience of persons using the highway, or affect the rights of the owners of premises adjoining the highway, or the rights of

[statutory undertakers or the operator of [an electronic communications code network]] [or a driver information system].

(5) Where a licence under this section makes provision for the execution of any works or the provision of any facilities which in the opinion of the highway authority require to be executed or provided by them in connection with the building or its construction or alteration, the authority may execute those works or, as the case may be, provide those facilities and may recover the expenses reasonably incurred by them in so doing from the licensee or from the owner of the building.

(6) A person aggrieved by the refusal of a highway authority to grant a licence under this section or by a term or condition of the licence may appeal to the Crown Court, except that no such appeal lies—

(a) if the land on which the highway in question is situated is owned by the highway authority, or

(b) against any term or condition which the highway authority declare to be necessary for the purpose of securing the safety of persons using the highway or of preventing interference with traffic thereon.

(7) Where a person has constructed or altered a building for the construction, or, as the case may be, alteration, of which a licence is required by this section without such a licence or otherwise than in accordance with the terms and conditions of the licence, the highway authority may by notice served on the licensee or the owner of the building require him to demolish the building within such time as may be specified in the notice or, as the case may be, to make such alterations therein and within such time as may be so specified.

(8) Where there has been a failure to comply with any terms or conditions of a licence under this section with respect to the maintenance or use of a building, the highway authority may by notice served on the licensee or the owner of the building require him to execute such works or take such steps as are necessary to secure compliance with those terms or conditions within such time as may be specified in the notice.

(9) If a person on whom a notice is served under subsection (7) or (8) above fails to comply with the notice within the time specified in it, the highway authority may demolish the building or, as the case may be, execute such works or take such steps as are necessary to comply with the notice and may recover the expenses reasonably incurred by them in so doing from that person.

(10) Where by virtue of subsection (9) above a highway authority demolish a building, they may dispose of the materials resulting from the demolition.

(11) In relation to any prohibition or restriction on the use of a building imposed by the Minister by virtue of any term or condition contained in a licence granted by him under this section, section 1(1)(c) of the Local Land Charges Act 1975 has effect as if the references to the date of the commencement of that Act were references to 1st November 1971.

[(12) [Part 10 of Schedule 3A to the Communications Act 2003 (the electronic communications code)] (which provides a procedure for certain cases where works involve the alteration of [electronic communication apparatus]) shall apply, for the purposes of works authorised or required by a licence under this section to be executed, to the licensee.]

(13) This section does not apply to a building which constitutes a bridge within the meaning of section 176 above, but subject to that in this section “building” includes any structure and any part of a building.

Highways Act 1980 (1980 c 66)

(14) Where the land on which a highway is situated is owned by the highway authority, nothing in subsection (3) above is to be taken as affecting the rights of that authority as the owner of that land to sell or lease the air-space above the surface of that land or grant any rights in relation to it.

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