

LICENSING SUB-COMMITTEE

MINUTES OF A MEETING of the Licensing Sub-committee held on Wednesday, 20 April 2016 at 9.30am in the executive meeting room, third floor, the Guildhall, Portsmouth

Present

Councillor Julie Swan (in the Chair)
Hannah Hockaday
Dave Ashmore

30. Appointment of Chair.

Councillor Julie Swan was appointed Chair.

31. Declarations of Members' Interests.

No interests were declared.

32. Highways Act 1980 - Provision of Highway Amenities Marilyn's Floral Boutique, 14 The Friary, Friary Close, Southsea PO5 2LS.

The Principal Licensing Officer introduced the report and asked the panel to note the following corrections:

- The distance from the shopfront to the kerb is 1.8m not 1.9m.
- The amenities are flowers and displays not tables and chairs.

There were no questions.

Rebecca Stuart, owner circulated photographs to the panel and included the following points in her representation:

- She had held the amenities licence for 20 years with no issues.
- It is not on a main road.
- There are some customers with disabilities.
- The photograph on pages 9-11 of the report show buckets of flowers which are not normally put outside. She was away and a member of her staff put them there in error.
- The displays brighten up the road.
- The outside displays could not be put inside the shop as space is limited.

Councillor Hugh Mason included the following points in his representation:

- The road next to the premises leads to flats and the carpark.
- Fewer than two dozen vehicles use that road per day.
- The width of the footway from the floral display to the kerb is 1.2m which is greater than the distance from the lamppost to the wall.
- The windows are smaller than typical shop windows so goods cannot be displayed to the same extent.
- The business is dependent on the ability to display goods outside.

In response to questions from members, Ms Stuart explained that normally the displays do not extend as far as shown on the photograph.

The Principal Licensing Officer added that he had visited twice; the photograph in the report was taken on his first visit. On the second visit the amenities were closer to the wall.

There were no further questions.

In summing up, the Principal Licensing Officer reminded members that their decision is final; the applicant has no right of appeal.

The applicant had nothing to add.

DECISION

The committee granted the application subject to the following conditions:

- **The distance from kerb to the frontage of the displays area must be no less than 1.2m.**
- **The amenity displays may be in place from 09:00 to 17:30 Monday to Saturday.**
- **The amenity display may be in place from 09:00 to 19:30 in December and on Valentine's Day and Mothers' Day.**

REASONS

In considering the application the committee heard all oral representations and considered the written documentation along with the relevant aspects of the Highway Act 1980 along with the guidance contained in the Amenity on the Highway Policy published by Portsmouth City Council. The policy was last published in November 2014.

Whilst there is no statutory definition of what amounts to an object or structure placed upon the highway, the committee was reminded that the underpinning of the adopted policy is that amenities provided on the highway should make a positive contribution and will not cause an unreasonable obstruction.

In addition, the committee was further mindful of the view that in confirming that obstructions are allowed onto the highway there should be consideration as to the need to protect the rights and safety of those persons using the highway.

In reaching its decision, the committee considered the following matters as having a material bearing on its decision:

1. The committee had specifically noted that the current application had been renewed year on year since 1996 without special conditions.
2. The committee noted the clear and focussed representations as to the balance of amenity usage and the creation of obstruction.
3. The committee accepted that each case is case specific and that in this case the pavement abuts to an adopted road which is a road with limited usage and presents less of a risk than a main thoroughfare.
4. There is evidence that those with mobility difficulties can adequately use the pavement.

5. The committee is reassured that the owner is vigilant to potential risk to all pedestrians

The committee considered that the applicant's Human Rights were engaged in that the applicant is entitled to a fair hearing and that the decision of the committee should be reasonable, proportionate and in the public interest.

33. Highways Act 1980 - Provision of Highway Amenities Portsmouth Fruit and Flowers, 169 Eastney Road, Southsea PO4 8EA.

The Principal Licensing Officer introduced the report and explained that there were the following corrections:

- The application is for Monday to Sunday, not Saturday.
- The amenities are flowers and displays, not tables and chairs.

In response to a question from members, he explained that the displays were not in the correct position on the first visit but were further back when he made the second visit.

Following a discussion, the following distances were agreed:

- From the bollard to the front of the trolley: 1.04m.
- From the corner of the trolley: 1.83m

There were no further questions.

Sue Manning, joint owner circulated letters from the Mary Rose School and the Chair of the Milton Neighbourhood Forum and photographs of disabled customers to the panel and included the following points in her representation:

- She and her husband had been trading for 25 years and held an amenities licence for 23 years without any complaints or problems.
- The bollard causes an obstruction and limits the pavement to 155cm at that point.
- The bollards are only at one end.
- They are aware of the needs of disabled people and had received the Silver Shopability Award after widening the door and raising the shop front.
- She offered members the opportunity to watch a video of some of the customers on her mobile phone. This offer was declined.

In response to questions from members, she added that:

- Christmas trees are displayed outside on the trolleys or in pots and are tied back or in netting.
- They serve the community.
- This premises offers a sought after service.
- The outdoor displays are vital to the success of the business.

The council's Access & Equality Officer suggested that in line with government guidance, a passing place could be incorporated along the side of the premises by moving one of the trolleys.

There were no further questions.

All parties declined the offer to sum up.

DECISION

The committee granted the application so as to permit amenity provision on the following basis:

- **Monday to Saturday 06:30 until 18:00.**
- **Sunday 09:00 until 15:00**

REASONS

The committee heard all oral representations and considered the written documentation along with the relevant aspects of the Highway Act 1980 along with the guidance contained in the Amenity on the Highway Policy published by Portsmouth City Council. The policy was last published in November 2014.

Whilst there is no statutory definition of what amounts to an object or structure placed upon the highway, the committee was reminded that the underpinning of the adopted policy is that amenities provided on the highway should make a positive contribution and will not cause an unreasonable obstruction.

In addition, the committee was further mindful of the view that in confirming that obstructions are allowed onto the highway there should be consideration as to the need to protect the rights and safety of those persons using the highway.

In reaching its decision, the committee considered the following matters as having a material bearing on its decision:

1. The committee noted that the current amenity licence had subsisted since 1993 and had been subject to renewals thereafter on a year by year basis.
2. The committee accepted that current display adds amenity to the area and does not present an unreasonable risk to users of the highway.
3. It was clear that the business owners are aware of issues pertaining to disability and is as such reassured that such obstruction as is permitted will be managed.
4. Having been referred to relevant guidance, the committee did not accept that any condition should be imposed to allow a break in the current display trollies' configuration.

The committee considered that the applicant's Human Rights were engaged in that the applicant is entitled to a fair hearing and that the decision of the committee should be reasonable, proportionate and in the public interest.

34. Highways Act 1980 - Provision of Highway Amenities Ron White, 26 Marmion Road, Southsea PO5 2BA.

The Principal Licensing Officer introduced the report.

There were no questions.

Steve White, owner included the following points in his representation:

- His father opened the shop in 1962 and the licence was granted 20 years ago and been renewed yearly.
- There have been no complaints or accidents.
- The display pretty much always extends no further than the lamppost and gully.
- The display is lit by the nearby lamppost.
- There is no space inside the shop to put the plants.
- The outside display lifts the general mood of the area.
- At Christmas, two or three trees are displayed outside. These have either tied branches or are netted.
- The outside display is vital to the success of the business.

Councillor Hugh Mason included the following points in his representation:

- The outside display had been there for over 50 years.
- He had received no complaints.
- The gully prevents people in wheelchairs passing anyway.
- The lamppost protrudes further than the display.
- The smokers who gather outside the nearby pub obstruct the highway.

In response to questions from members, Mr White explained that the display is cleared by 17:30.

There were no further questions.

In summing up, the Principal Licensing Officer reminded members that their decision is final; the applicant has no right of appeal.

Mr White and the Access & Equalities Officer had nothing to add.

DECISION

The committee granted the application so as to permit amenity usage Monday to Sunday from 09:00 until 17:30 to allow dismantling of the display from 17:00 onwards.

REASONS

In considering the application the committee heard all oral representations and considered the written documentation along with the relevant aspects of the Highway Act 1980 along with the guidance contained in the Amenity on the Highway Policy published by Portsmouth City Council. The policy was last published in November 2014.

Whilst there is no statutory definition of what amounts to an object or structure placed upon the highway, the committee was reminded that the underpinning of the adopted policy is that amenities provided on the highway should make a positive contribution and will not cause an unreasonable obstruction.

In addition, the committee was further mindful of the view that in confirming that obstructions are allowed onto the highway there should be consideration

as to the need to protect the rights and safety of those persons using the highway.

In addition, to the above the committee was reminded in the report to consider the matters raised on page 2 and 4; this said the committee recognised that each application is fact specific and whilst guidance exists the decision rests with the committee.

In reaching its decision, the committee considered the following matters as having a material bearing on its decision:

1. The committee was informed that the current usage was had subsisted for over 50 years and as a licensed amenity from 1996.
2. The committee accepted the representation that the current display does not and will not encroach beyond the lamppost shown on page 51 of the report.
3. It was clear that the display and amenity adds to the area and that the owners are fully cognisant of managing the obstruction and risk, including during Winter time.

The committee considered that the applicant's Human Rights were engaged in that the applicant is entitled to a fair hearing and that the decision of the committee should be reasonable, proportionate and in the public interest.

35. Highways Act 1980 - Provision of Highway Amenities at Smile, 49 Marmion Road, Southsea PO5 2AT.

The chair agreed to hear this item first.

The Principal Licensing Officer introduced the report.

The officers who submitted representations were not available to attend the meeting.

In response to questions from the applicant's solicitor, the Licensing Assistant explained that

- For a renewal of an amenities licence, letters are sent to ward councillors, relevant council officers, the fire service and police service for comment giving them two weeks to respond.
- It is not known if the two council officers who submitted representations visited the site but they are familiar with the location.
- The measurements were taken by the Principal Licensing Officer.

There were no further questions for the Licensing Officer.

Graeme Quar, Solicitor circulated photos of the amenities outside LouLous and this premises, a map of the area, extracts of council policies and the owner's insurance certificate. He then included the following points in his representation:

- The photos show that the menus were securely attached to the wall and would not fall on pedestrians.

- The distance between the kerb and the pillar is 1.2m and from the kerb to the front of the table is 1.53m. The table overhangs by about 5-7cm.
- There are no lampposts in front of the premises.
- There have been two outside tables and four chairs for nine years and no incidents, accidents or complaints.
- The council encourages this type of business as is shown in its policies.
- The café closes at 3.30 so there is no issue with illumination.
- The rush hour is over by the time the café opens at 9am and restarts after it closes.
- The government's guidance states that a parent and pushchair requires 1.5m and an adult and child 1.2m. There is therefore sufficient pavement width outside the premises.
- The amenities make a positive contribution to the street scene and are important to both the success of the business and Southsea town centre.
- The amenities do not cause an unreasonable obstruction.
- The applicant would be happy to accept any of the standard conditions the panel might impose.

In response to questions from members, he explained that:

- Staff ask customers to keep any bags close to them so as not to obstruct the highway.
- If someone with a pushchair or wheelchair sits at an outside table, the other chair is removed.

In response to questions from the council's Access & Equalities Officer, Sheena Heath, joint owner explained that:

- The tables and chairs are a vibrant colour and are no more of a hazard than the lamppost.
- Staff check that customers comply with requests to move their bags closer to them.
- It is rare that someone stops to talk to a customer who is sitting at an outside table as shown in the photo on pages 75-77 of the report.

In summing up, the Principal Licensing Officer reminded members that their decision is final; the applicant has no right of appeal.

In summing up, Mr Quar asked the panel to note that the café Lou Lous which is close to this premises was recently granted a licence for similar arrangements.

DECISION

The committee granted the application as requested for the following times:

- **Tuesday to Friday 09:00 to 15:30.**
- **Saturday 09:00 to 16:00.**
- **Sunday 09:30 to 15:00.**

REASONS

In considering the application the committee heard all oral representations and considered the written documentation along with the relevant aspects of

the Highway Act 1980 along with the guidance contained in the Amenity on the Highway Policy published by Portsmouth City Council. The policy was last published in November 2014.

Whilst there is no statutory definition of what amounts to an object or structure placed upon the highway, the committee was reminded that the underpinning of the adopted policy is that amenities provided on the highway should make a positive contribution and will not cause an unreasonable obstruction.

In addition, the committee was further mindful of the view that in confirming that obstructions are allowed onto the highway there should be consideration as to the need to protect the rights and safety of those persons using the highway.

In addition to the above the committee was reminded in the report to consider the matters raised on pages 2 and 4; this said the committee recognised that each application is fact specific and whilst guidance exists the decision rests with the committee.

In reaching its decision, the committee considered the following matters as having a material bearing on its decision:

1. It was noted that the current arrangement of table and chairs had subsisted since 2007; the application successfully renewing on a year on year basis thereafter.
2. Whilst there is a potential risk to users of the highway, the committee was assured by the owners' clear acceptance of responsibility and management of the risk in the area.
3. The committee carefully considered all the comments made in respect of policies.

The committee accepted that the standard conditions were applicable and did not impose any specific conditions.

The committee considered that the applicant's Human Rights were engaged in that the applicant is entitled to a fair hearing and that the decision of the committee should be reasonable, proportionate and in the public interest.

The meeting concluded at 12.55pm.

Councillor Julie Swan
Chair