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# NOTICE OF MEETING

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## LICENSING SUB-COMMITTEE

WEDNESDAY, 20 APRIL 2016 AT 9.30 AM

THE EXECUTIVE MEETING ROOM, THIRD FLOOR, THE GUILDHALL,  
PORTSMOUTH,

Telephone enquiries to Lucy Wingham 02392 834662

Email: [lucy.wingham@portsmouthcc.gov.uk](mailto:lucy.wingham@portsmouthcc.gov.uk)

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Committee Members Councillors Julie Swan (Chair), Hannah Hockaday (Vice Chair), Dave Ashmore, Jennie Brent, Margaret Foster, David Fuller, Paul Godier, Scott Harris, Steve Hastings, Lee Mason, Phil Smith, David Tompkins, Gerald Vernon-Jackson, Yahiya Chowdhury and one vacancy.

The panel today consists of : Councillors Julie Swan, Hannah Hockaday and Dave Ashmore  
The reserve member is Councillor Jennie Brent.

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(NB This Agenda should be retained for future reference with the minutes of this meeting.)

Please note that the agenda, minutes and non-exempt reports are available to view online on the Portsmouth City Council website: [www.portsmouth.gov.uk](http://www.portsmouth.gov.uk)

**Licensing Sub Committee meetings are digitally recorded.**

## **A G E N D A**

- 1 **Appointment of Chair.**
- 2 **Declarations of Members' Interests.**
- 3 **Highways Act 1980 - Provision of Highway Amenities Marilyn's Floral Boutique, 14 The Friary, Friary Close, Southsea PO5 2LS. (Pages 1 - 22)**

Purpose.

The purpose of this report is for the committee to consider objections received in respect of the provision of highway amenities consisting of goods at Marilyn's Floral Boutique and so far as this relates to the renewal (or

otherwise) of a previous amenity permission granted to the premises.

**RECOMMENDED that the committee determine the application.**

- 4 Highways Act 1980 - Provision of Highway Amenities Portsmouth Fruit and Flowers, 169 Eastney Road, Southsea PO4 8EA. (Pages 23 - 44)**

Purpose

The purpose of this report is for the committee to consider objections received in respect of the provision of highway amenities consisting of goods at Portsmouth Fruit and Flowers and so far as this relates to the renewal (or otherwise) of a previous amenity permission granted to the premises.

**RECOMMENDED that the committee determine the application.**

- 5 Highways Act 1980 - Provision of Highway Amenities Ron White, 26 Marmion Road, Southsea PO5 2BA. (Pages 45 - 66)**

Purpose

The purpose of this report is for the committee to consider objections received in respect of the provision of highway amenities consisting of goods at Ron Whites and so far as this relates to the renewal (or otherwise) of a previous amenity permission granted to the premises.

**RECOMMENDED that the committee determine the application**

- 6 Highways Act 1980 - Provision of Highway Amenities at Smile, 49 Marmion Road, Southsea PO5 2AT. (Pages 67 - 98)**

Purpose

The purpose of this report is for the committee to consider objections received in respect of the provision of highway amenities consisting of two tables and four chairs at Smile and so far as this relates to the renewal (or otherwise) of a previous amenity permission granted to the premises.

**RECOMMENDED that the committee determine the application.**

Members of the public are now permitted to use both audio visual recording devices and social media during this meeting, on the understanding that it neither disrupts the meeting or records those stating explicitly that they do not wish to be recorded. Guidance on the use of devices at meetings open to the public is available on the Council's website and posters on the wall of the meeting's venue.

# Agenda Item 3

REPORT TO: LICENSING SUB-COMMITTEE

REPORT BY: LICENSING MANAGER

REPORT AUTHOR: MR DEREK STONE

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

## 1. PURPOSE OF REPORT

The purpose of this report is for the Committee to consider objections received in respect of the provision of highway amenities consisting of **goods** at Marilyn's Floral Boutique and so far as this relates to the renewal (or otherwise) of a previous amenity permission granted to the premises.

2. **RECOMMENDED** that the committee determine the application.<sup>1</sup>

## 3. THE PREMISES AND PROPOSED/PERMITTED AMENITY ACTIVITIES

**Name (if any) and address of premises:** **Marilyn's Floral Boutique**  
14 The Friary  
Friary Close, Southsea  
PO5 2LS

**Amenity activities to include dates and timings:**

Goods	Monday to Sunday	09:30	17:00
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A copy of the application under consideration is attached as **appendix A**.  
Relevant photographs and plans are attached as **appendix B**.

## 4. BACKGROUND INFORMATION AND LICENSING HISTORY

Marilyn's is a ground floor florist shop situated on the west side of Friary Close. The pavement area outside Marilyn's is narrow with a width of 1.8 metres. The distance from the outside edge of the flower display on the pavement to kerb edge is 90 cm.

**Officer note: Please see photograph of lamp post reducing the width of the footpath.**

Waitrose is situated nearby together with many local business premises including a travel agent, Reeds Rains, Barnardo's, Pearsons, Fat Face, Lou Lou's, Smile and Southsea Rock. There are residential flats above these shops.

The premises are open Monday to Saturday 09:30 until 17:00 and are owned by Ms Rebecca Stewart the applicant.

The amenity permission history is as follows:

- October 1996 - first amenity permission granted for goods to be placed on the highway.
- Permission renewed on a yearly basis.
- The 2015 amenity "renewal" application has been subject to representations and stands referred for determination by the committee.

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<sup>1</sup>If mindful of granting (or renewing) the permission, the committee MAY consider the imposition of further tailored conditions to ensure that the approval does not cause an unreasonable obstruction of the highway.

## 5. REPRESENTATIONS RECEIVED

The representations received are attached as **appendix C** and can be summarized as

- Insufficient clear width of footway for pedestrians, persons with disabilities and/or impaired vision - this view is endorsed by the council's equality advisor

The new amenity policy has a clear expectation that a **minimum clearance width of between 1.8 and 2.0 metres** must be maintained at all times. In this particular case the footpath is only 1.9 metres wide.

Members should be aware however that the premises has previously benefitted from an amenity permission for the provision of tables and chairs for a number of years.

## 6. POLICY AND STATUTORY CONSIDERATIONS

Sections 115A to 115K of the Highways Act 1980 relate to the provision of amenities on the highway. The council **MAY** grant a person permission to provide facilities for recreation and refreshment and also to use objects or structures\* on, in or over a highway for the purposes of:

- Resulting in the production of income
- Providing a centre for advice or information
- Advertising

***\*There is no definition of objects or structures which could include a multitude of different uses including tables, chairs, planters, parasols, barriers, food displays etc.***

Amenity permissions are subject to public consultation (by way of public notice on the premises and via the PCC web) for a period of 28 days. Any representations received must be considered.

Consultation also takes place with the Police and Fire authorities together with the council's equality advisor, planning and highway authority and ward councillors. This consultation procedure (with the exception of the prescribed public notice) also applies to the "renewal" process each year.

Over 70 amenity permissions have been granted around the city under delegated authority with the vast majority being for the use of tables and chairs on the highway and associated with established pubs and cafes etc.

Permissions are normally granted or renewed for a period of 12 months and are subject to the imposition of conditions together with the payment of reasonable fees.

The council requires all amenity permission holders to provide proof of third party public liability indemnity insurance to the value of £5,000,000.

The Highway Amenities policy ("the policy") was approved, following extensive consultation, by the full Licensing Committee on 13 January 2015 (minute 5/2015 refers) and is attached as **appendix D**.

The scheme of delegation was subsequently approved by full Council on 20 January 2015 (minute 9/2015 refers) with a proviso that any contested amenity application would stand referred to a panel consisting of 3 Licensing Committee members for final determination.

Underpinning the policy is an expectation that any amenities provided on the highway will make a..... **"positive contribution and will not cause an unreasonable obstruction".....** **"and to protect the rights and safety of those persons using the highway".....** (page 2 of the policy refers).

Members may also wish to take into consideration the following further policy extracts:

- **"amenities must be carefully managed"**
- **"especially at risk are people with impaired vision or other disabilities"**
- **"there should be adequate thoroughfare for pedestrians including wheelchair users and people with assistance dogs"** (page 2 refers).
- **"A minimum clearance width of between 1.8 and 2 metres must be maintained"** (page 4 refers).

Each case will however be considered on merit.

## 7. HUMAN RIGHTS

The Human Rights Act 1998 applies to the consideration of this matter.

The committee are reminded that the applicant (or amenity permission holder) is entitled to a fair hearing and any decision(s) should be reasonable, proportionate and in the public interest.

There is no statutory right of appeal to the Magistrates' against either a decision to refuse to grant, to refuse to renew or to revoke an existing highway amenity permission nor is there any appeal against condition(s) imposed.

The council has a duty to maintain the highway and to protect the public right to the use of the highway. Should a person (or business) continue to place amenities on the highway **after** a refusal or revocation decision, they are likely to be investigated and reported for an offence of obstruction of the highway contrary to section 137 of the Highways Act 1980.

Equally, members could instruct officers to take such action in individual circumstances.

## 8. APPENDICES

- A. Copy of amenity application
- B. Relevant photographs
- C. Representations received
- D. Adopted Highway Amenity Policy - see appendix D of agenda item 6

**THE COMMITTEE IS REQUESTED TO DETERMINE THE APPLICATION**

For Licensing Manager  
And on behalf of Head of Service

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# Highways Act 1980

Application for Consent to Provide Amenities and other Facilities on the Highway

CURRENT: 14/04281/AMENIT  
NEW: 15/01/15/AMENIT  
Date: 9.10.15  
Receipt No: .....

I/We hereby apply to the Portsmouth City Council for Consent to Provide Amenities on the Highway in accordance with part VIIA of the Highways Act 1980 as amended by Section 20, and Schedule 5 of the Local Government (Miscellaneous Provisions) Act 1982.

### DETAILS OF APPLICANT

1. Full Name Ms Rebecca Stewart

2. Address Marilyn's Floral Boutique  
14 The Friary  
Friary Close  
Southsea  
PO5 2LS



3. Nature of Business of Applicant **FLORIST**

4. Name and Address of Business Marilyn's Floral Boutique  
14 The Friary  
Friary Close  
Southsea  
PO5 2LS

5. Preferred contact details for correspondence **E MAIL**

### DETAILS OF AMENITIES

6. Precise location and extent of object or structure to be placed on Highway including tables, chairs and canopies etc. Together with dimensions for area required in metres.

**ITEMS TO BE PLACED WIDTH OF SHOP WITH FLOWERS/ PLANTS + DISPLAY STANDS.**

**Dimensions: Length: 4.5m Width: 600cm Area: .....**

7. Nature of amenities to be provided eg refreshment tables and chairs etc **PLANTS / FLOWERS / GIFTS**

8. Times of the day during which amenities will be provided **9AM - 5PM UNLESS BUSY PERIODS IT MAY BE SLIGHTLY LATER XMAS ETC**



9. Is it proposed to sell  
intoxicating liquor  
for consumption on  
the highway

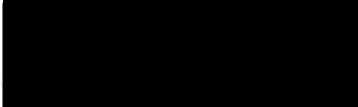
NO

10. Is it intended for  
cash sales to take  
place on the  
highway

NO

I declare that to the best of my knowledge and belief that the answers to these questions are correct.

Date 8/10/15

Signed 

NOTE: This application together with the relevant fees (**effective from November 2014**):

For goods on the highway £296.00 for a new application; £169.00 for a renewal:

For table & chairs on the highway £127.00 for a new application plus:

- a) >5 m2 £244.00
- b) 5>10 m2 £483.00
- c) 10>15 m2 £728.00
- d) 15>20 m2 £966.00
- e) >20 m2 £1207.00

For annual licence renewal for table & chairs use above schedule.

Variation of licence £73.00.

The relevant fee must be forwarded to the Licensing Service, Civic Offices, Guildhall Square, Portsmouth, PO1 2AL. Cheques must be made payable to Portsmouth City Council. (Application fee non-refundable).

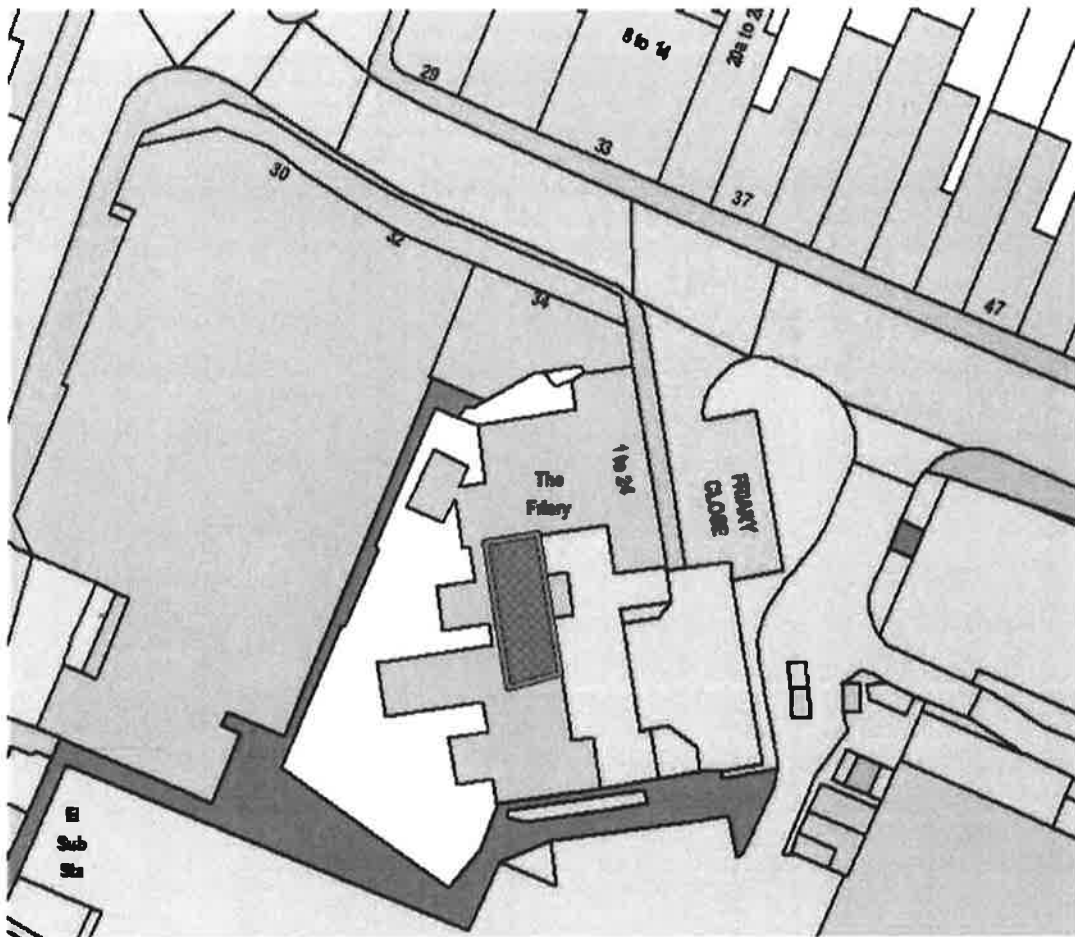
1. Please attach a sketch showing the extent of the amenities/structure to be placed on the highway and:-
  - i) indicating the position in relation to your own premises, and
  - ii) the position in relation to any other premises
2. Please supply a copy of your Third Party Public Liability Insurance in the sum of £5 million.
3. Please note that an official Notice in connection with the application will be issued to you. This must be displayed in the front window of your premises for 28 days.

***"Portsmouth City Council is committed to complying with the Freedom of Information Act 2000 (FOIA) which applies to all recorded information that it holds or is held on its behalf. Information that is provided to or held by the City Council will be processed and disclosed strictly in accordance with the FOIA, the Data Protection Act 1998 or other appropriate legislation".***

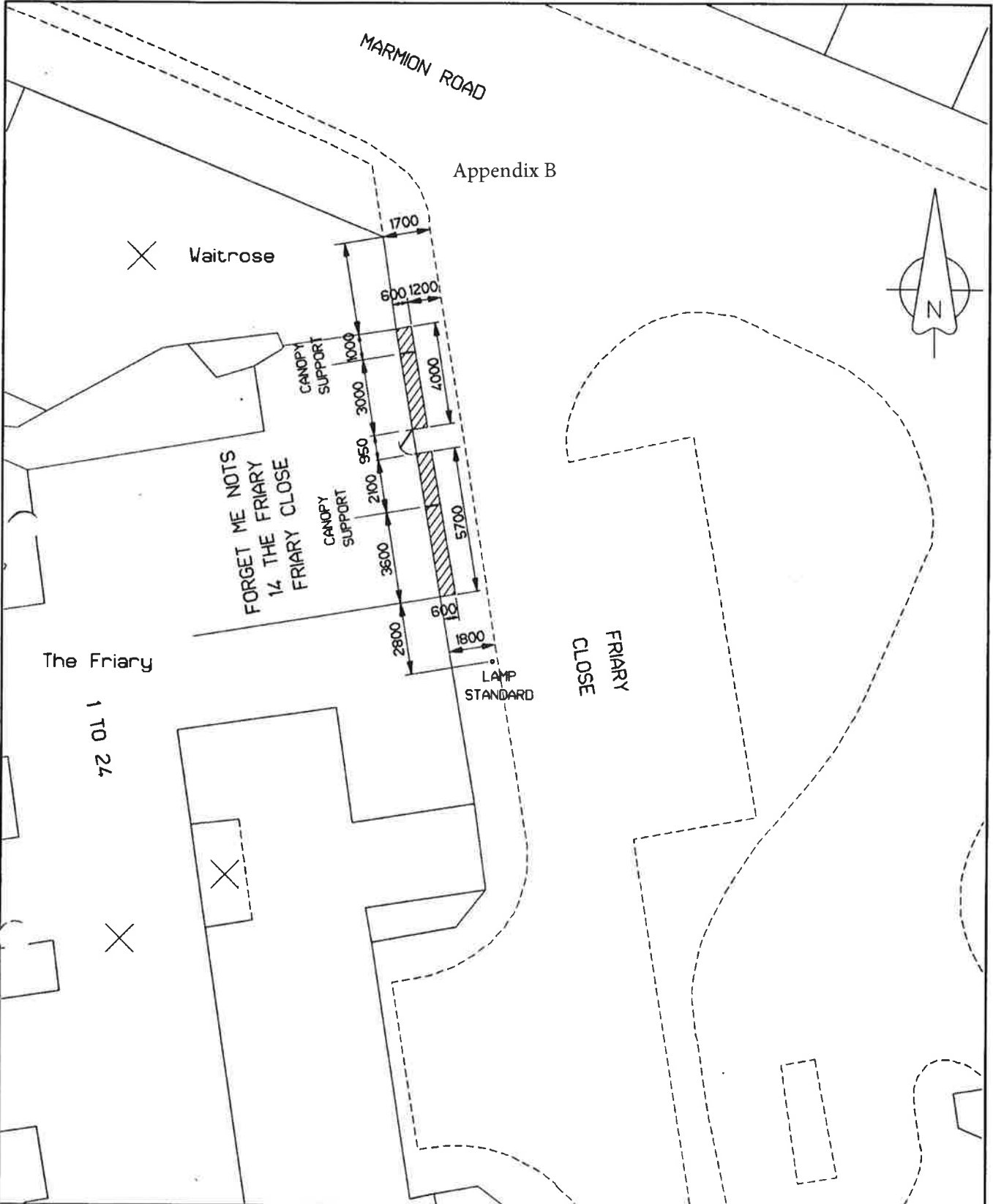
*This authority is under a duty to protect the public funds it administers, and to this end may use the information you have provided on this form for the prevention and detection of fraud. It may also share this information with other bodies responsible for auditing or administering public funds for these purposes. For further information go to [www.portsmouth.gov.uk](http://www.portsmouth.gov.uk) and search for 'National Fraud Initiative'.*



Appendix B



REPRODUCED FROM THE ORDNANCE SURVEY MAPPING WITH PERMISSION OF THE CONTROLLER OF HER MAJESTY'S STATIONERY OFFICE © CROWN COPYRIGHT. UNAUTHORISED REPRODUCTION INFRINGES CROWN COPYRIGHT AND MAY LEAD TO PROSECUTION OR CIVIL PROCEEDINGS. LICENCE AGREEMENT NUMBER LA100019671- PORTSMOUTH CITY COUNCIL



Based on reproduced from Ordnance Survey 1:1250 Base Maps with the permission of HMSO © Crown copyright reserved. Unauthorised reproduction infringes Crown copyright and may lead to prosecution or civil proceedings. Licence No LA 078999.			
Rev	Revision Details	Date	Approved by

Project	FORGET ME NOTS 14 THE FRIARY FRIARY CLOSE SOUTHSEA		
Drawing Title	AMENITIES LICENCE PROPOSAL		
Date	OCT 98	Scale	1:100

Portsmouth CITY COUNCIL		ENGINEERING AND DESIGN SERVICE PR KING CENG NICE MIHT CITY ENGINEER	
DEPARTMENTAL SECTION -			
Tel No		Fax No	
Design/Survey by	Drawn by	Checked by	
EC 19.10.98	GB 19.10.98		
Drawing No			
CCS/3155/10			
SURVEY	DESIGN	WORKING DRAWING	
FEASIBILITY	TENDER	AS-BUILT	









**Stone, Derek**

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**From:** Shepherd, Tracey  
**Sent:** 12 October 2015 09:43  
**To:** Maidment, Hazel  
**Cc:** Love, Michelle; Perryman, Gina; Kerens-Bathmaker, Amber; Turton, Pam  
**Subject:** RE: AMENITY ON THE HIGHWAY LICENCE - MARILYN'S FLORAL BOUTIQUE 14 THE FRIARY FRIARY CLOSE SOUTHSEA PO5 2LS - UNIFORM REF: 15/04159/AMENIT

Dear Hazel

Unfortunately, the footway within this location does not meet the minimum requirement of the 1.8mtrs we request for access for vulnerable pedestrians. Therefore, to permit any restrictions for amenities will cause an issue. The proposals would reduce the existing footway width to just over 1.1mtr in width. This means that the proposals do not meet the recommendations as set out in the policy.

Michelle and Gina - what are your views regarding this application? I appreciate that this has been granted in the past and I am unaware of any objections that have been received. However, the existing footway within this vicinity is already below the recommendations. I would like to know your opinions regarding this application.

Many thanks and kind regards,

Tracey

[REDACTED] (Senior IEng, FIHE)

Traffic Engineer,  
Road Safety & Active Travel.

Portsmouth City Council  
Civic Offices  
Guildhall Square  
Portsmouth  
Hampshire PO1 2NE

---

**From:** Maidment, Hazel  
**Sent:** 09 October 2015 11:01  
**To:** [REDACTED]

**Subject:** AMENITY ON THE HIGHWAY LICENCE - MARILYN'S FLORAL BOUTIQUE 14 THE FRIARY FRIARY CLOSE SOUTHSEA PO5 2LS - UNIFORM REF: 15/04159/AMENIT

I am writing to advise you that I have received an application from the proprietor of the above premises for permission to continue to provide highway amenities outside the premises.

The amenities consist of goods and are placed on the highway from 09:30 until 17:30 Monday to Saturday.

The amenities have not changed or altered since last years' application and the purpose of this email is to enquire if you have any objections to the renewal of the licence for a further one year period.

If I do not hear from you by 23 October 2015 I will assume you have no adverse comments to make and I will issue the licence.

Thank you.

Hazel Maidment  
Licensing Assistant  
Portsmouth City Council  
Civic Offices  
Guildhall Square  
Portsmouth  
PO1 2AL

T: 023 9283 4572

F: 023 9283 4811

E: [REDACTED]

[www.portsmouth.gov.uk](http://www.portsmouth.gov.uk)



**Stone, Derek**

---

**From:** Perryman, Gina  
**Sent:** 12 October 2015 12:20  
**To:** Maidment, Hazel  
**Cc:** Shepherd, Tracey; Love, Michelle; Turton, Pam  
**Subject:** RE: AMENITY ON THE HIGHWAY LICENCE - MARILYN'S FLORAL BOUTIQUE 14 THE FRIARY FRIARY CLOSE SOUTHSEA PO5 2LS - UNIFORM REF: 15/04159/AMENIT

Hi Hazel,

I can't see how they can have an amenities area as the highway is only 1.8metres without any obstacles so I would not authorise this license.

Regards

**Gina Perryman**  
**Access & equality advisor**

Civic offices  
Guildhall square  
Portsmouth  
PO1 2AL

Tel: [REDACTED]  
Email: [REDACTED]

Gina

---

**From:** Maidment, Hazel  
**Sent:** 09 October 2015 11:01  
**To:** [REDACTED]  
**Subject:** AMENITY ON THE HIGHWAY LICENCE - MARILYN'S FLORAL BOUTIQUE 14 THE FRIARY FRIARY CLOSE SOUTHSEA PO5 2LS - UNIFORM REF: 15/04159/AMENIT

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The amenities consist of goods and are placed on the highway from 09:30 until 17:30 Monday to Saturday.

The amenities have not changed or altered since last years' application and the purpose of this email is to enquire if you have any objections to the renewal of the licence for a further one year period.

If I do not hear from you by 23 October 2015 I will assume you have no adverse comments to make and I will issue the licence.

Thank you.

Hazel Maidment  
Licensing Assistant  
Portsmouth City Council  
Civic Offices  
Guildhall Square  
Portsmouth  
PO1 2AL  
T: 023 9283 4572

F: [REDACTED]

[www.portsmouth.gov.uk](http://www.portsmouth.gov.uk)

**Stone, Derek**

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**From:** Love, Michelle  
**Sent:** 12 October 2015 16:55  
**To:** Perryman, Gina; Maidment, Hazel  
**Cc:** Shepherd, Tracey; Turton, Pam  
**Subject:** RE: AMENITY ON THE HIGHWAY LICENCE - MARILYN'S FLORAL BOUTIQUE 14 THE FRIARY FRIARY CLOSE SOUTHSEA PO5 2LS - UNIFORM REF: 15/04159/AMENIT  
**Attachments:** RE: AMENITY ON THE HIGHWAY LICENCE - MARILYN'S FLORAL BOUTIQUE 14 THE FRIARY FRIARY CLOSE SOUTHSEA PO5 2LS - UNIFORM REF: 14/04281/AMENIT

Dear Hazel,

I agree with Tracey and Gina's comments and would not support a renewal of the licence.

FYI attached is the correspondence from last year as the issue of space was also highlighted then.

Kind Regards

Michelle

---

**From:** Perryman, Gina  
**Sent:** 12 October 2015 12:20  
**To:** Maidment, Hazel  
**Cc:** Shepherd, Tracey; Love, Michelle; Turton, Pam  
**Subject:** RE: AMENITY ON THE HIGHWAY LICENCE - MARILYN'S FLORAL BOUTIQUE 14 THE FRIARY FRIARY CLOSE SOUTHSEA PO5 2LS - UNIFORM REF: 15/04159/AMENIT

Hi Hazel,

I can't see how they can have an amenities area as the highway is only 1.8metres without any obstacles so I would not authorise this license.

Regards

**Gina Perryman**  
**Access & equality advisor**

Civic offices  
Guildhall square  
Portsmouth  
PO1 2AL

Tel: [REDACTED]  
[REDACTED]

Gina

---

**From:** Maidment, Hazel  
**Sent:** 09 October 2015 11:01  
**To:** [REDACTED]  
[REDACTED]

[REDACTED]  
**Subject:** AMENITY ON THE HIGHWAY LICENCE - MARILYN'S FLORAL BOUTIQUE 14 THE FRIARY FRIARY CLOSE  
SOUTHSEA PO5 2LS - UNIFORM REF: 15/04159/AMENIT

I am writing to advise you that I have received an application from the proprietor of the above premises for permission to continue to provide highway amenities outside the premises.

The amenities consist of goods and are placed on the highway from 09:30 until 17:30 Monday to Saturday.

The amenities have not changed or altered since last years' application and the purpose of this email is to enquire if you have any objections to the renewal of the licence for a further one year period.

If I do not hear from you by 23 October 2015 I will assume you have no adverse comments to make and I will issue the licence.

Thank you.

Hazel Maidment  
Licensing Assistant  
Portsmouth City Council  
Civic Offices  
Guildhall Square  
Portsmouth  
PO1 2AL

T: 023 9283 4572

F: 023 9283 4811

E: [REDACTED]

[www.portsmouth.gov.uk](http://www.portsmouth.gov.uk)

**Stone, Derek**

---

**From:** Shepherd, Tracey  
**Sent:** 23 October 2014 14:34  
**To:** Maidment, Hazel  
**Cc:** Love, Michelle; Perryman, Gina; Griffin, Marc  
**Subject:** RE: AMENITY ON THE HIGHWAY LICENCE - MARILYN'S FLORAL BOUTIQUE 14 THE FRIARY FRIARY CLOSE SOUTHSEA PO5 2LS - UNIFORM REF: 14/04281/AMENIT

Dear Hazel.

As there have been no complaints received to date regarding the existing arrangement, and the applicant is working with us to ensure that vulnerable residents can access the area I am happy to permit the existing arrangement to continue.

If there are any complaints received we need to ensure that they are addressed. However, the proprietor has shown that she is approachable and amenable and therefore any issues can be addressed as and when they arise.

Gina and Michelle - would you be happy with allowing the existing arrangement to continue for the time being?

Hope that this is of assistance.

Kind regards,

Tracey

(Senior IEng, FIHE)

Traffic Engineer,  
Road Safety & Active Travel.

Portsmouth City Council  
Civic Offices  
Guildhall Square  
Portsmouth  
Hampshire PO1 2NE

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**From:** Maidment, Hazel  
**Sent:** 23 October 2014 14:19  
**To:** Shepherd, Tracey  
**Cc:** Love, Michelle; Perryman, Gina; Griffin, Marc  
**Subject:** RE: AMENITY ON THE HIGHWAY LICENCE - MARILYN'S FLORAL BOUTIQUE 14 THE FRIARY FRIARY CLOSE SOUTHSEA PO5 2LS - UNIFORM REF: 14/04281/AMENIT

Dear Tracey

I have spoken with the proprietor of Marilyn's today. The existing display has been measured up but it is hard to see how she can reduce the area as it is only 600mm already. However, she has agreed to keep the area clear by the

lamppost and everything else tucked right in against the shop frontage. No problems have been experienced with vulnerable pedestrians or mobility scooters in the past.

I appreciate the area may have to go when the new policy is approved but wonder if we can accommodate the premises for a little while longer?

Hazel

---

**From:** Shepherd, Tracey  
**Sent:** 08 October 2014 14:12  
**To:** Maidment, Hazel  
**Cc:** Love, Michelle; Perryman, Gina; Griffin, Marc  
**Subject:** RE: AMENITY ON THE HIGHWAY LICENCE - MARILYN'S FLORAL BOUTIQUE 14 THE FRIARY FRIARY CLOSE SOUTHSEA PO5 2LS - UNIFORM REF: 14/04281/AMENIT

Dear Hazel.

With reference to the above application, I have to agree with Gina's comments. We would normally ask for a minimum of 1.5mtrs wide between the proposed amenities and the front face of kerb to allow for safe pedestrian access around the area. We have to consider the movements of all pedestrians within the area, including the City's more vulnerable pedestrians.

We also need to consider that some pedestrians may stand and block the remaining footway while perusing the display outside of the shop within the proposed amenity licence. This will add additional obstacles for pedestrians to negotiate within the remaining footway.

Can we ask the premises to reduce the proposed amenity area to permit more footway width for pedestrians to negotiate obstacles? I know that we have permitted this application within the past but all parties need to realise the new regulations and requirements for our more vulnerable pedestrians.

Many thanks and kind regards,

Tracey

(Senior IEng, FIHE)

Traffic Engineer,  
Road Safety & Active Travel.

Portsmouth City Council  
Civic Offices  
Guildhall Square  
Portsmouth  
Hampshire PO1 2NE

---

**Sent:** 08 October 2014 10:18  
**To:** Corporate Assets; Elliott, Steve; Evans, David (LEI); Fire; Harper, Sue; Lennard, Lynne; Love, Michelle; Moon, Simon; Perryman, Gina; Police - licensing; Robinson, Michael; Salmon, Lynette; Shepherd, Tracey; Turton, Pam; Walker, Barry; Walker, Colin (RBU); Andrewes, Michael (Cllr); Mason, Hugh (Cllr); Symes, Linda (Cllr)  
**Subject:** AMENITY ON THE HIGHWAY LICENCE - MARILYN'S FLORAL BOUTIQUE 14 THE FRIARY FRIARY CLOSE SOUTHSEA PO5 2LS - UNIFORM REF: 14/04281/AMENIT

I am writing to advise you that I have received an application from the proprietor of the above premises for permission to continue to provide highway amenities outside the premises.

The amenities consist of goods and are placed on the highway from 09:30 until 17:30 Monday to Saturday.

The amenities have not changed or altered since last years application and the purpose of this email is to enquire if you have any objections to the renewal of the licence for a further one year period.

If I do not hear from you by 22 October 2014 I will assume you have no adverse comments to make and I will issue the licence.

Thank you.

Hazel Maidment  
Licensing Assistant  
Portsmouth City Council  
Civic Offices  
Guildhall Square  
Portsmouth  
PO1 2AL  
T: 023 9283 4572  
F:

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# Agenda Item 4

REPORT TO: LICENSING SUB-COMMITTEE

REPORT BY: LICENSING MANAGER

REPORT AUTHOR: MR DEREK STONE

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

## 1. PURPOSE OF REPORT

The purpose of this report is for the Committee to consider objections received in respect of the provision of highway amenities consisting of **goods** at Portsmouth Fruit and Flowers and so far as this relates to the renewal (or otherwise) of a previous amenity permission granted to the premises.

2. **RECOMMENDED** that the committee determine the application.<sup>1</sup>

## 3. THE PREMISES AND PROPOSED/PERMITTED AMENITY ACTIVITIES

**Name (if any) and address of premises:** **Portsmouth Fruit and Flowers**  
169 Eastney Road,  
Southsea  
PO4 8EA

**Amenity activities to include dates and timings:**

Goods	Monday to Saturday	06:30	18:00
-------	--------------------	-------	-------

A copy of the application under consideration is attached as **appendix A**.

Relevant photographs and plans are attached as **appendix B**.

## 4. BACKGROUND INFORMATION AND LICENSING HISTORY

Portsmouth Fruit and Flowers is located on the west side of Milton Road at the junction with Middlesex Road. The pavement width is 2.1 metres. Along the area where goods are displayed are bollards placed on the kerb side to prevent vehicles parking on the footpath. The distance between the premises wall to the bollard is 1m 55cm with 1 metre between the edge of the display to the bollard.

The premises are open Monday to Saturday 09:00 until 18:00 and on Sunday 09:00 to 15:00 and are owned by Mr Andrew Manning the applicant

The amenity permission history is as follows:

- September 1993 - first amenity permission granted for goods to be placed on the highway.
- Permission renewed on a yearly basis.
- The 2015 amenity "renewal" application has been subject to representations and stands referred for determination by the committee.

<sup>1</sup>If mindful of granting (or renewing) the permission, the committee MAY consider the imposition of further tailored conditions to ensure that the approval does not cause an unreasonable obstruction of the highway.  
If mindful of revoking or refusing to renew the permission, the committee will give reasons as appropriate to the matter under consideration.

## 5. REPRESENTATIONS RECEIVED

The representations received are attached as **appendix C** and can be summarized as

- Insufficient clear width of footway for pedestrians, persons with disabilities and/or impaired vision - this view is endorsed by the council's equality advisor

The new amenity policy has a clear expectation that a **minimum clearance width of between 1.8 and 2.0 metres** must be maintained at all times. In this particular case the footpath is only 1.9 metres wide.

Members should be aware however that the premises has previously benefitted from an amenity permission for the provision of tables and chairs for a number of years.

## 6. POLICY AND STATUTORY CONSIDERATIONS

Sections 115A to 115K of the Highways Act 1980 relate to the provision of amenities on the highway. The council **MAY** grant a person permission to provide facilities for recreation and refreshment and also to use objects or structures\* on, in or over a highway for the purposes of:

- Resulting in the production of income
- Providing a centre for advice or information
- Advertising

***\*There is no definition of objects or structures which could include a multitude of different uses including tables, chairs, planters, parasols, barriers, food displays etc.***

Amenity permissions are subject to public consultation (by way of public notice on the premises and via the PCC web) for a period of 28 days. Any representations received must be considered.

Consultation also takes place with the Police and Fire authorities together with the council's equality advisor, planning and highway authority and ward councillors. This consultation procedure (with the exception of the prescribed public notice) also applies to the "renewal" process each year.

Over 70 amenity permissions have been granted around the city under delegated authority with the vast majority being for the use of tables and chairs on the highway and associated with established pubs and cafes etc.

Permissions are normally granted or renewed for a period of 12 months and are subject to the imposition of conditions together with the payment of reasonable fees.

The council requires all amenity permission holders to provide proof of third party public liability indemnity insurance to the value of £5,000,000.

The Highway Amenities policy ("the policy") was approved, following extensive consultation, by the full Licensing Committee on 13 January 2015 (minute 5/2015 refers) and is attached as **appendix D**.

The scheme of delegation was subsequently approved by full Council on 20 January 2015 (minute 9/2015 refers) with a proviso that any contested amenity application would stand referred to a panel consisting of 3 Licensing Committee members for final determination.

Underpinning the policy is an expectation that any amenities provided on the highway will make a..... **"positive contribution and will not cause an unreasonable**

***obstruction"....." and to protect the rights and safety of those persons using the highway".....*** (page 2 of the policy refers).

Members may also wish to take into consideration the following further policy extracts:

- ***"amenities must be carefully managed"***
- ***"especially at risk are people with impaired vision or other disabilities"***
- ***"there should be adequate thoroughfare for pedestrians including wheelchair users and people with assistance dogs"*** (page 2 refers).
- ***"A minimum clearance width of between 1.8 and 2 metres must be maintained"*** (page 4 refers).

Each case will however be considered on merit.

## **7. HUMAN RIGHTS**

The Human Rights Act 1998 applies to the consideration of this matter.

The committee are reminded that the applicant (or amenity permission holder) is entitled to a fair hearing and any decision(s) should be reasonable, proportionate and in the public interest.

There is no statutory right of appeal to the Magistrates' against either a decision to refuse to grant, to refuse to renew or to revoke an existing highway amenity permission nor is there any appeal against condition(s) imposed.

The council has a duty to maintain the highway and to protect the public right to the use of the highway. Should a person (or business) continue to place amenities on the highway **after** a refusal or revocation decision, they are likely to be investigated and reported for an offence of obstruction of the highway contrary to section 137 of the Highways Act 1980.

Equally, members could instruct officers to take such action in individual circumstances.

## **8. APPENDICES**

- A. Copy of amenity application
- B. Relevant photographs
- C. Representations received
- D. Adopted Highway Amenity Policy - see appendix D of agenda item 6

**THE COMMITTEE IS REQUESTED TO DETERMINE THE APPLICATION**

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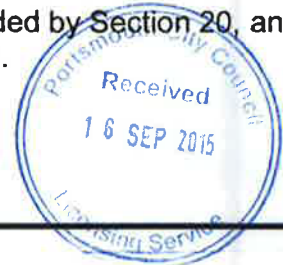


# Highways Act 1980

Application for Consent to Provide Amenities and other Facilities on the Highway

CURRENT: 14/04176/AMENIT  
NEW: 15/04176/AMENIT  
Date: 16.9.15  
Receipt No: .....

I/We hereby apply to the Portsmouth City Council for Consent to Provide Amenities on the Highway in accordance with part VIIA of the Highways Act 1980 as amended by Section 20, and Schedule 5 of the Local Government (Miscellaneous Provisions) Act 1982.



### DETAILS OF APPLICANT

1. Full Name Mr Andrew Manning

2. Address [Redacted]

3. Nature of Business of Applicant

4. Name and Address of Business Portsmouth Fruit And Flowers  
169 Eastney Road  
Southsea  
PO4 8EA

5. Preferred contact details for correspondence AS ABOVE. [Redacted]

### DETAILS OF AMENITIES

6. Precise location and extent of object or structure to be placed on Highway including tables, chairs and canopies etc. Together with dimensions for area required in metres. *Same as every year*  
[Redacted]  
Dimensions: Length:..... Width:.....Area:.....

7. Nature of amenities to be provided eg refreshment tables and chairs etc

8. Times of the day during which amenities will be provided 7-30 - 6pm.

[Redacted]

9. Is it proposed to sell intoxicating liquor for consumption on the highway

N A

10. Is it intended for cash sales to take place on the highway

N A

I declare that to the best of my knowledge and belief that the answers to these questions are correct.

Date 15-9-15

Signed [Redacted]

NOTE: This application together with the relevant fees (**effective from November 2014**):

For goods on the highway £296.00 for a new application; £169.00 for a renewal:

For table & chairs on the highway £127.00 for a new application plus:

- a) >5 m2 £244.00
- b) 5>10 m2 £483.00
- c) 10>15 m2 £728.00
- d) 15>20 m2 £966.00
- e) >20 m2 £1207.00

For annual licence renewal for table & chairs use above schedule.

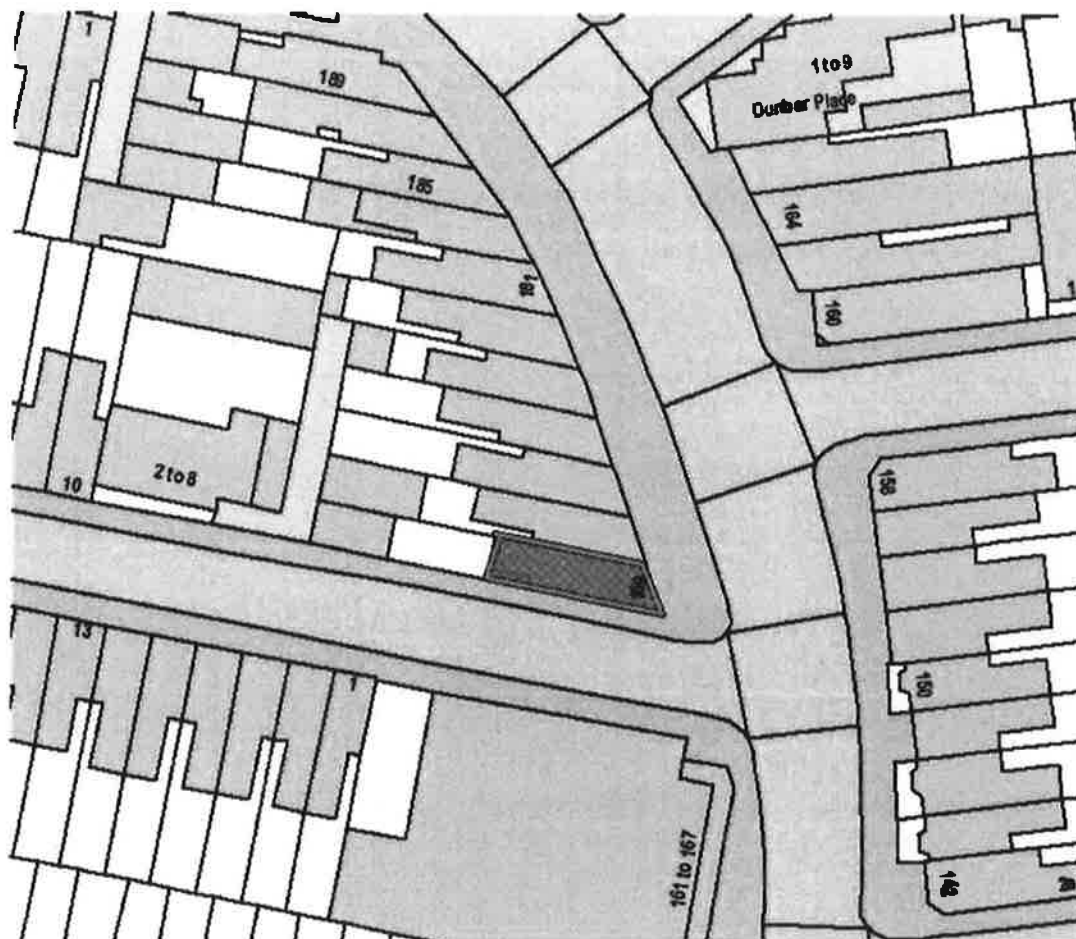
Variation of licence £73.00.

The relevant fee must be forwarded to the Licensing Service, Civic Offices, Guildhall Square, Portsmouth, PO1 2AL. Cheques must be made payable to Portsmouth City Council. (Application fee non-refundable).

1. Please attach a sketch showing the extent of the amenities/structure to be placed on the highway and:-
  - i) indicating the position in relation to your own premises, and
  - ii) the position in relation to any other premises
2. Please supply a copy of your Third Party Public Liability Insurance in the sum of £5 million.
3. Please note that an official Notice in connection with the application will be issued to you. This must be displayed in the front window of your premises for 28 days.

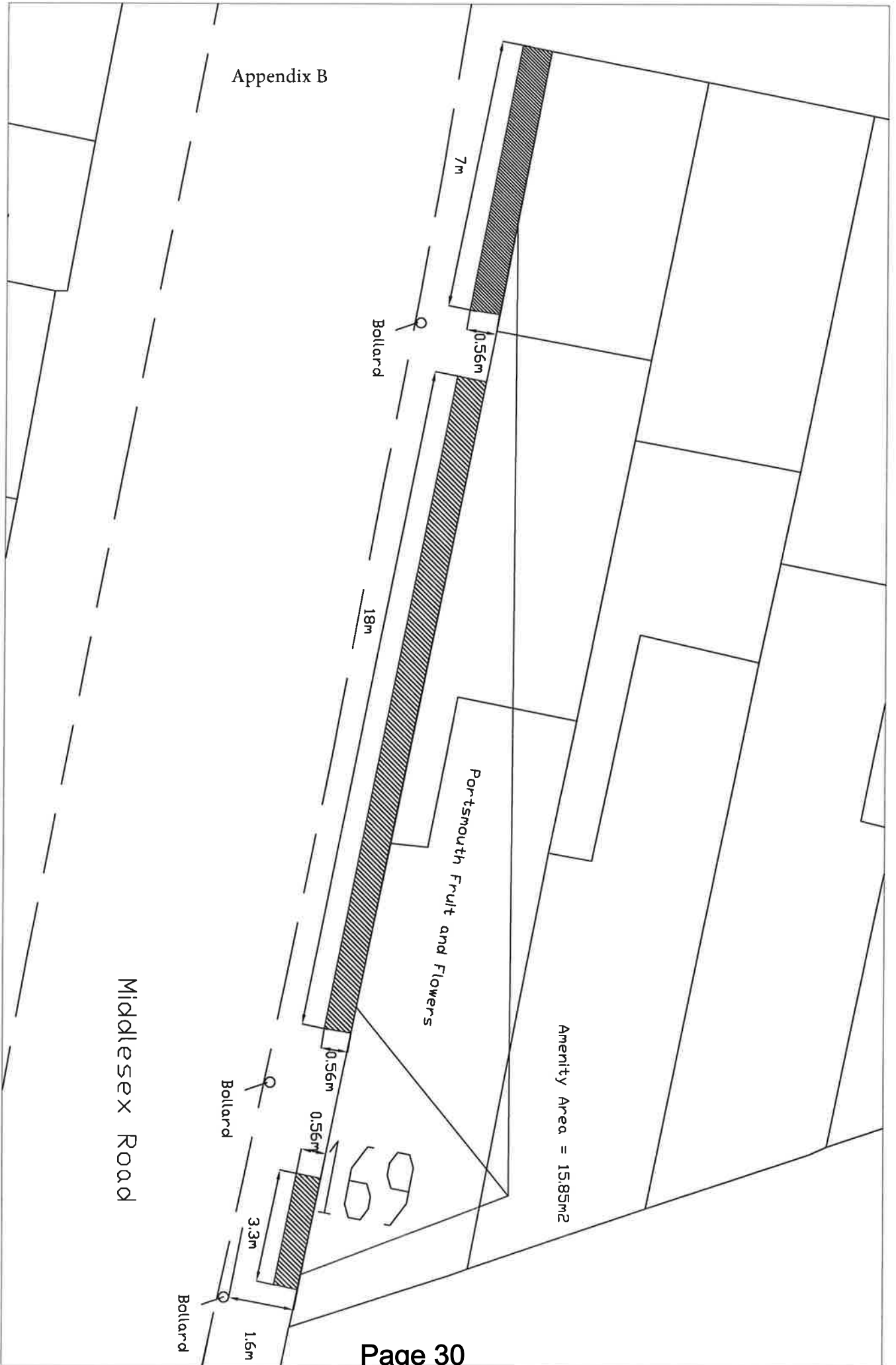
***"Portsmouth City Council is committed to complying with the Freedom of Information Act 2000 (FOIA) which applies to all recorded information that it holds or is held on its behalf. Information that is provided to or held by the City Council will be processed and disclosed strictly in accordance with the FOIA, the Data Protection Act 1998 or other appropriate legislation".***

*This authority is under a duty to protect the public funds it administers, and to this end may use the information you have provided on this form for the prevention and detection of fraud. It may also share this information with other bodies responsible for auditing or administering public funds for these purposes. For further information go to [www.portsmouth.gov.uk](http://www.portsmouth.gov.uk) and search for 'National Fraud Initiative'.*



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Appendix B















Appendix B









**Stone, Derek**

---

**From:** Perryman, Gina  
**Sent:** 16 September 2015 09:55  
**To:** Maidment, Hazel  
**Cc:** Shepherd, Tracey; Love, Michelle; Turton, Pam  
**Subject:** RE: AMENITY ON THE HIGHWAY LICENCE - PORTSMOUTH FRUIT AND FLOWERS  
169 EASTNEY ROAD SOUTHSEA PO4 8EA - UNIFORM REF: 15/04047/AMENIT

Hi Hazel,

I agree with Tracey's comments the pavement is not wide enough for them to have any amenity area as the its only leaves 1m for people to pass.

Regards

**Gina Perryman**  
**Access & equality advisor**

Civic offices  
Guildhall square  
Portsmouth  
PO1 2AL

Tel: [REDACTED]  
[REDACTED]

---

**From:** Maidment, Hazel  
**Sent:** 16 September 2015 09:07  
**To:** [REDACTED]

**Subject:** AMENITY ON THE HIGHWAY LICENCE - PORTSMOUTH FRUIT AND FLOWERS 169 EASTNEY ROAD  
SOUTHSEA PO4 8EA - UNIFORM REF: 15/04047/AMENIT

I am writing to advise you that I have received an application from the proprietor of the above premises for permission to continue to provide highway amenities in Middlesex Road.

The amenities consist of goods and are placed on the highway from 06:30 until 18:00 Monday to Saturday.

The amenities have not changed or altered since last years' application and the purpose of this email is to enquire if you have any objections to the renewal of the licence for a further one year period.

If I do not hear from you by 30 September 2015 I will assume you have no adverse comments to make and I will issue the licence.

Thank you.

Hazel Maidment

Licensing Assistant  
Portsmouth City Council  
Civic Offices  
Guildhall Square  
Portsmouth  
PO1 2AL  
T: 023 9283 4572  
F: [REDACTED]

[www.portsmouth.gov.uk](http://www.portsmouth.gov.uk)

**Stone, Derek**

---

**From:** Love, Michelle  
**Sent:** 21 September 2015 21:17  
**To:** Shepherd, Tracey; Maidment, Hazel  
**Cc:** Perryman, Gina; Kerens-Bathmaker, Amber; Turton, Pam  
**Subject:** RE: AMENITY ON THE HIGHWAY LICENCE - PORTSMOUTH FRUIT AND FLOWERS  
169 EASTNEY ROAD SOUTHSEA PO4 8EA - UNIFORM REF: 15/04047/AMENIT

Dear Hazel,

I agree with Tracey and Gina's comments and would only support an application if it is in compliance with the Amenities on the Highway Policy.

Kind Regards

Michelle

---

**From:** Shepherd, Tracey  
**Sent:** 16 September 2015 09:29  
**To:** Maidment, Hazel  
**Cc:** Love, Michelle; Perryman, Gina; Kerens-Bathmaker, Amber; Turton, Pam  
**Subject:** RE: AMENITY ON THE HIGHWAY LICENCE - PORTSMOUTH FRUIT AND FLOWERS 169 EASTNEY ROAD SOUTHSEA PO4 8EA - UNIFORM REF: 15/04047/AMENIT  
**Importance:** High

Dear Hazel

Unfortunately, the footway within this location does not meet the minimum requirement of the 1.8mtrs we request for access for vulnerable pedestrians. Therefore, to permit any restrictions for amenities will cause an issue. The proposals would reduce the existing footway width to just over 1.0mtr in width. This means that the proposals do not meet the recommendations as set out in the policy.

Michelle and Gina - what are your views regarding this application? I appreciate that this has been granted in the past and I am unaware of any objections that have been received. However, the existing footway within this vicinity is already below the recommendations. I would like to know your opinions regarding this application.

Many thanks and kind regards,

Tracey

 (Senior IEng, FIHE)

Traffic Engineer,  
Road Safety & Active Travel.

Portsmouth City Council  
Civic Offices  
Guildhall Square  
Portsmouth  
Hampshire PO1 2NE

[REDACTED]

---

**From:** Maidment, Hazel  
**Sent:** 16 September 2015 09:07  
**To:** [REDACTED]

**Subject:** AMENITY ON THE HIGHWAY LICENCE - PORTSMOUTH FRUIT AND FLOWERS 169 EASTNEY ROAD SOUTHSEA PO4 8EA - UNIFORM REF: 15/04047/AMENIT

I am writing to advise you that I have received an application from the proprietor of the above premises for permission to continue to provide highway amenities in Middlesex Road.

The amenities consist of goods and are placed on the highway from 06:30 until 18:00 Monday to Saturday.

The amenities have not changed or altered since last years' application and the purpose of this email is to enquire if you have any objections to the renewal of the licence for a further one year period.

If I do not hear from you by 30 September 2015 I will assume you have no adverse comments to make and I will issue the licence.

Thank you.

Hazel Maidment  
Licensing Assistant  
Portsmouth City Council  
Civic Offices  
Guildhall Square  
Portsmouth  
PO1 2AL  
T: 023 9283 4572  
F: 023 9283 4811  
E: [REDACTED]  
[www.portsmouth.gov.uk](http://www.portsmouth.gov.uk)

**Stone, Derek**

---

**From:** Shepherd, Tracey  
**Sent:** 16 September 2015 09:29  
**To:** Maidment, Hazel  
**Cc:** Love, Michelle; Perryman, Gina; Kerens-Bathmaker, Amber; Turton, Pam  
**Subject:** RE: AMENITY ON THE HIGHWAY LICENCE - PORTSMOUTH FRUIT AND FLOWERS  
169 EASTNEY ROAD SOUTHSEA PO4 8EA - UNIFORM REF: 15/04047/AMENIT

**Importance:** High

Dear Hazel

Unfortunately, the footway within this location does not meet the minimum requirement of the 1.8mtrs we request for access for vulnerable pedestrians. Therefore, to permit any restrictions for amenities will cause an issue. The proposals would reduce the existing footway width to just over 1.0mtr in width. This means that the proposals do not meet the recommendations as set out in the policy.

Michelle and Gina - what are your views regarding this application? I appreciate that this has been granted in the past and I am unaware of any objections that have been received. However, the existing footway within this vicinity is already below the recommendations. I would like to know your opinions regarding this application.

Many thanks and kind regards,

Tracey

 (Senior IEng, FIHE)

Traffic Engineer,  
Road Safety & Active Travel.

Portsmouth City Council  
Civic Offices  
Guildhall Square  
Portsmouth  
Hampshire PO1 2NE



---

**From:** Maidment, Hazel  
**Sent:** 16 September 2015 09:07  
**To:**   
**Subject:** AMENITY ON THE HIGHWAY LICENCE - PORTSMOUTH FRUIT AND FLOWERS 169 EASTNEY ROAD  
SOUTHSEA PO4 8EA - UNIFORM REF: 15/04047/AMENIT

I am writing to advise you that I have received an application from the proprietor of the above premises for permission to continue to provide highway amenities in Middlesex Road.

The amenities consist of goods and are placed on the highway from 06:30 until 18:00 Monday to Saturday.

The amenities have not changed or altered since last years' application and the purpose of this email is to enquire if you have any objections to the renewal of the licence for a further one year period.

If I do not hear from you by 30 September 2015 I will assume you have no adverse comments to make and I will issue the licence.

Thank you.

Hazel Maidment  
Licensing Assistant  
Portsmouth City Council  
Civic Offices  
Guildhall Square  
Portsmouth  
PO1 2AL

T: 023 9283 4572

F: 023 9283 4811

E: [REDACTED]

[www.portsmouth.gov.uk](http://www.portsmouth.gov.uk)

# Agenda Item 5

REPORT TO: LICENSING SUB-COMMITTEE

REPORT BY: LICENSING MANAGER

REPORT AUTHOR: MR DEREK STONE

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

## 1. PURPOSE OF REPORT

The purpose of this report is for the Committee to consider objections received in respect of the provision of highway amenities consisting of **goods** at Ron Whites and so far as this relates to the renewal (or otherwise) of a previous amenity permission granted to the premises.

2. **RECOMMENDED** that the committee determine the application.<sup>1</sup>

## 3. THE PREMISES AND PROPOSED/PERMITTED AMENITY ACTIVITIES

Name (if any) and address of premises: **Ron White**  
26 Marmion Road  
Southsea  
PO5 2BA

Amenity activities to include dates and timings:

Goods	Monday to Sunday	09:30	17:00
-------	------------------	-------	-------

A copy of the application letter is attached as **appendix A**.

Relevant photographs and plans are attached as **appendix B**.

## 4. BACKGROUND INFORMATION AND LICENSING HISTORY

Ron Whites is a ground floor Market garden / Greengrocer's shop established in 1962 and is situated on the south side of Marmion Road between the precinct and Richmond Place. The pavement area outside Ron Whites is narrow with a width of 2 meters. The distance between the kerb edge and the outside edge of the goods measures 1m 50cm.

***Officer note: Please see photograph of street lighting positioned alongside the goods which reduces the width of the pavement to 1m 50cm***

Waitrose is situated nearby and other local business including a travel agent, Reeds Rains, Barnardo's, Pearsons, Fat Face, Lou Lou's, Smile and Southsea Rock. There are residential flats above the shops.

---

<sup>1</sup>If mindful of granting (or renewing) the permission, the committee MAY consider the imposition of further tailored conditions to ensure that the approval does not cause an unreasonable obstruction of the highway.

If mindful of revoking or refusing to renew the permission, the committee will give reasons as appropriate to the matter under consideration.

The premises open Monday to Saturday 09:30 until 17:30 with the goods outside removed from 17:00 daily. The premises are owned by Mr Steven Ronald White the applicant.

The amenity permission history is as follows:

- May 1996 - first amenity permission granted for goods to be placed on the highway.
- Permission renewed on a yearly basis with minor changes around timings.
- The 2015 amenity "renewal" application has been subject to representations and stands referred for determination by the committee.

## 5. REPRESENTATIONS RECEIVED

The representations received are attached as **appendix C** and can be summarized as

- Insufficient clear width of footway for pedestrians, persons with disabilities and/or impaired vision - this view is endorsed by the council's equality advisor

The new amenity policy has a clear expectation that a **minimum clearance width of between 1.8 and 2.0 metres** must be maintained at all times. In this particular case the footpath is only 1.9 metres wide.

Members should be aware however that the premises has previously benefitted from an amenity permission for the provision of tables and chairs for a number of years.

## 6. POLICY AND STATUTORY CONSIDERATIONS

Sections 115A to 115K of the Highways Act 1980 relate to the provision of amenities on the highway. The council **MAY** grant a person permission to provide facilities for recreation and refreshment and also to use objects or structures\* on, in or over a highway for the purposes of:

- Resulting in the production of income
- Providing a centre for advice or information
- Advertising

***\*There is no definition of objects or structures which could include a multitude of different uses including tables, chairs, planters, parasols, barriers, food displays etc.***

Amenity permissions are subject to public consultation (by way of public notice on the premises and via the PCC web) for a period of 28 days. Any representations received must be considered.



Consultation also takes place with the Police and Fire authorities together with the council's equality advisor, planning and highway authority and ward councillors. This consultation procedure (with the exception of the prescribed public notice) also applies to the "renewal" process each year.

Over 70 amenity permissions have been granted around the city under delegated authority with the vast majority being for the use of tables and chairs on the highway and associated with established pubs and cafes etc.

Permissions are normally granted or renewed for a period of 12 months and are subject to the imposition of conditions together with the payment of reasonable fees.

The council requires all amenity permission holders to provide proof of third party public liability indemnity insurance to the value of £5,000,000.

The Highway Amenities policy ("the policy") was approved, following extensive consultation, by the full Licensing Committee on 13 January 2015 (minute 5/2015 refers) and is attached as **appendix D**.

The scheme of delegation was subsequently approved by full Council on 20 January 2015 (minute 9/2015 refers) with a proviso that any contested amenity application would stand referred to a panel consisting of 3 Licensing Committee members for final determination.

Underpinning the policy is an expectation that any amenities provided on the highway will make a..... **"positive contribution and will not cause an unreasonable obstruction".....** **"and to protect the rights and safety of those persons using the highway".....** (page 2 of the policy refers).

Members may also wish to take into consideration the following further policy extracts:

- **"amenities must be carefully managed"**
- **"especially at risk are people with impaired vision or other disabilities"**
- **"there should be adequate thoroughfare for pedestrians including wheelchair users and people with assistance dogs"** (page 2 refers).
- **"A minimum clearance width of between 1.8 and 2 metres must be maintained"**

(page 4 refers).

Each case will however be considered on merit.

## **7. HUMAN RIGHTS**

The Human Rights Act 1998 applies to the consideration of this matter.

The committee are reminded that the applicant (or amenity permission holder) is entitled to a fair hearing and any decision(s) should be reasonable, proportionate and in the public interest.

There is no statutory right of appeal to the Magistrates' against either a decision to refuse to grant, to refuse to renew or to revoke an existing highway amenity permission nor is there any appeal against condition(s) imposed.

The council has a duty to maintain the highway and to protect the public right to the use of the highway. Should a person (or business) continue to place amenities on the highway **after** a refusal or revocation decision, they are likely to be investigated and reported for an offence of obstruction of the highway contrary to section 137 of the Highways Act 1980.

Equally, members could instruct officers to take such action in individual circumstances.

## **8. APPENDICES**

- A.** Copy of amenity application
- B.** Relevant photographs
- C.** Representations received
- D.** Adopted Highway Amenity Policy - see appendix D of agenda item 6

**THE COMMITTEE IS REQUESTED TO DETERMINE THE APPLICATION**

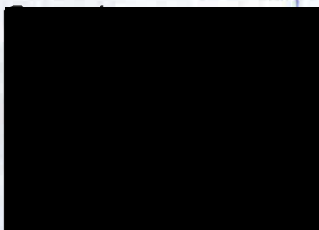
For Licensing Manager  
and on behalf of Head of Service

15/03/23/AMENIT



Portsmouth  
CITY COUNCIL

Mr Steven Ronald White



Licensing Service

Civic Offices  
Guildhall Square  
Portsmouth  
PO1 2AL

Phone: 023 9283 4572  
Our Ref: 14/03245/AMENIT  
Date: 4 June 2015

Dear Mr White

**AMENITY ON THE HIGHWAY LICENCE  
RE: RON WHITES 26 MARMION ROAD SOUTHSEA PO5 2BA**

My records show that the amenity licence for the above premises has now expired.

This means that you cannot use the public highway for your amenities. Placing amenities on the highway without the benefit of a licence may result in confiscation of goods or prosecution for obstructing the highway.

If you wish to renew the amenity licence please return the renewal form, payment and proof of public liability insurance in the sum of £5 million by 18 June 2015.

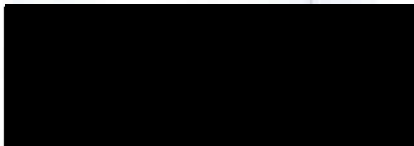
The fee to renew the licence is shown in the box on the top right hand side of the form and can be paid by:-



- Cheque (payable to Portsmouth City Council) ✓
- Cash (at the Civic Offices) or
- Debit/credit card (telephone 023 9283 4572).

Please do not hesitate to contact me if you have any queries.

Yours sincerely



Hazel Maidment  
Licensing Assistant

Email:

*please note: All fees on pavement the same as before*

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ts.co.uk  
THERAPY  
ridge  
THERAPIST  
ACTIONER  
SMOKING  
BUSY  
LOSS  
EAS  
SPACE  
CE ABOVE  
42 1077  
751 527



Appendix B Ron White Marmion  
Road







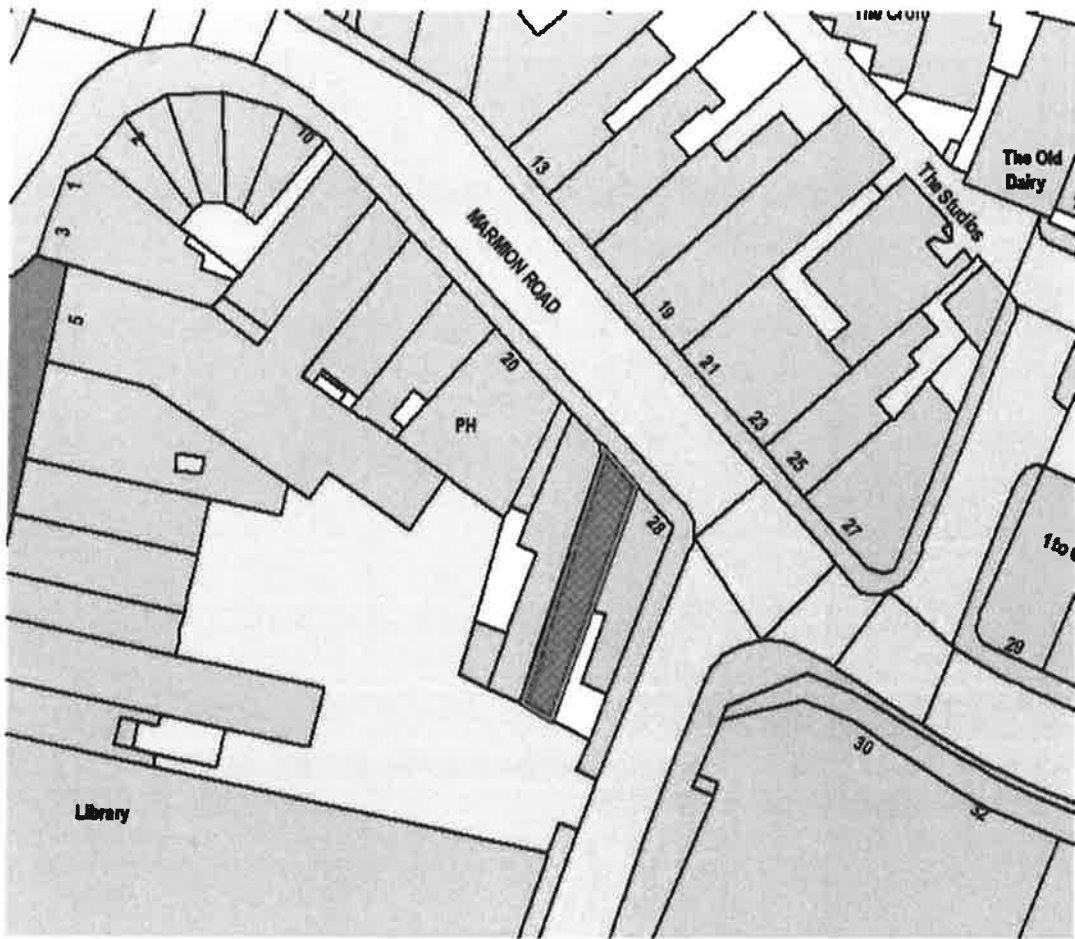




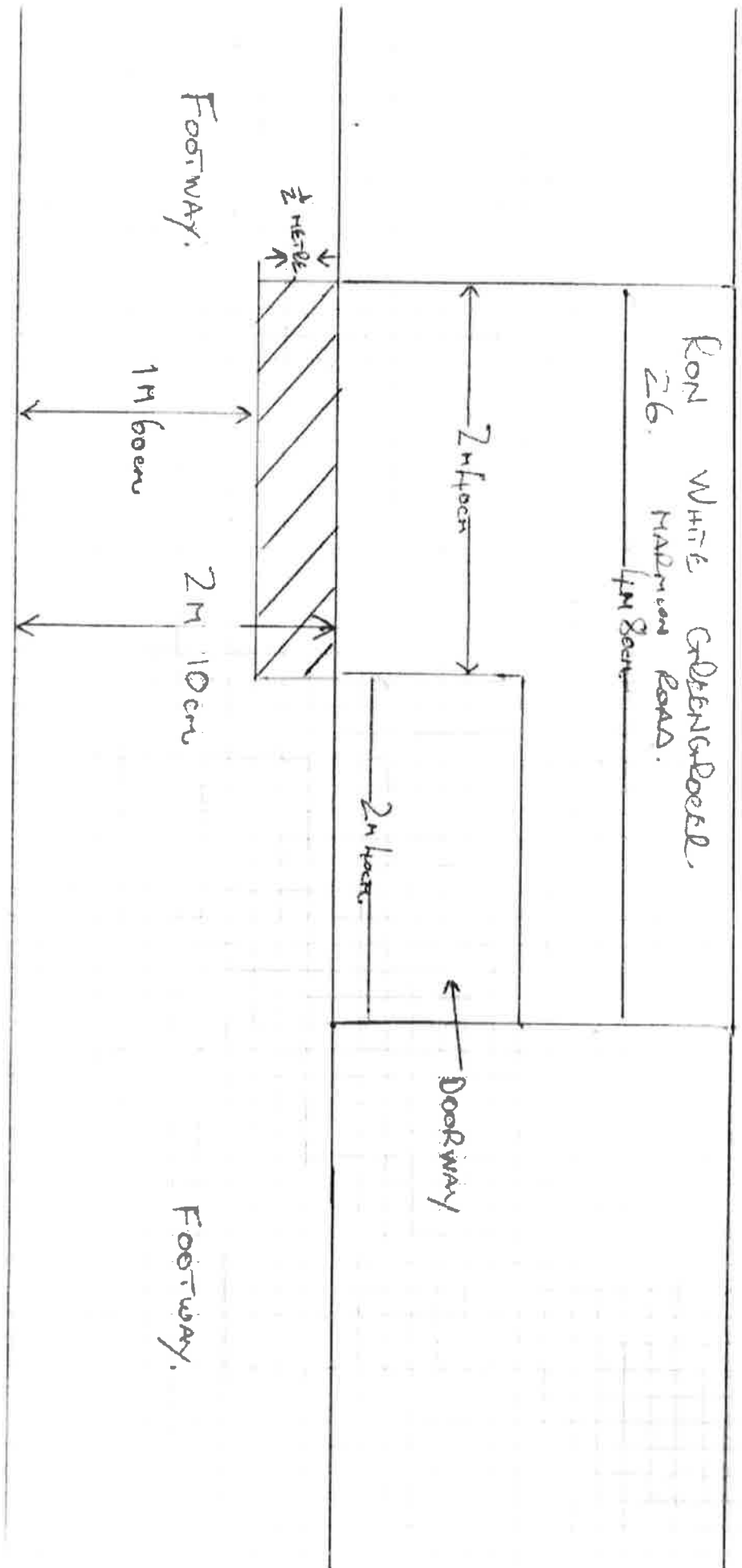




Appendix B



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MARSHION ROAD.

SKETCH PLAN  
NOT TO SCALE  
30/6/98  
N

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**Stone, Derek**

---

**From:** Perryman, Gina  
**Sent:** 23 June 2015 16:30  
**To:** Maidment, Hazel  
**Cc:** Shepherd, Tracey; Love, Michelle; Turton, Pam  
**Subject:** RE: AMENITY ON THE HIGHWAY LICENCE - RON WHITES 26 MARMION ROAD SOUTHSEA PO5 2BA - UNIFORM REF: 15/03523/AMENIT

Hi Hazel,

I have an issue with this application as there is only a 1.6m clear walkway which is not in accordance of the policy that says it should be 1.8m.

Regards

**Gina Perryman**  
**Access & equality advisor**

Civic offices  
Guildhall square  
Portsmouth  
PO1 2AL

Tel: [REDACTED]  
[REDACTED]

---

**From:** Maidment, Hazel  
**Sent:** 23 June 2015 16:23  
**To:** [REDACTED]  
**Subject:** AMENITY ON THE HIGHWAY LICENCE - RON WHITES 26 MARMION ROAD SOUTHSEA PO5 2BA - UNIFORM REF: 15/03523/AMENIT

I am writing to advise you that I have received an application from the proprietor of the above premises for permission to continue to provide highway amenities outside the premises.

The amenities consist of goods and are placed on the highway from 09:30 until 17:00 everyday.

The amenities have not changed or altered since last years' application and the purpose of this email is to enquire if you have any objections to the renewal of the licence for a further one year period.

If I do not hear from you by 7 July 2015 I will assume you have no adverse comments to make and I will issue the licence.

Thank you.

Hazel Maidment  
Licensing Assistant

Portsmouth City Council  
Civic Offices  
Guildhall Square  
Portsmouth  
PO1 2AL  
T: 023 9283 4572  
F: 023 9283 4811  
E: [REDACTED]  
[www.portsmouth.gov.uk](http://www.portsmouth.gov.uk)



**Stone, Derek**

---

**From:** Love, Michelle  
**Sent:** 24 June 2015 16:24  
**To:** Shepherd, Tracey; Maidment, Hazel  
**Cc:** Perryman, Gina; Kerens-Bathmaker, Amber; Turton, Pam  
**Subject:** RE: AMENITY ON THE HIGHWAY LICENCE - RON WHITES 26 MARMION ROAD SOUTHSEA PO5 2BA - UNIFORM REF: 15/03523/AMENIT

Dear Hazel,

If there is only 1.6m clear footway available then this application does not adhere to the policy and Highways PFI would not support the application.

Kind Regards

Michelle

---

**From:** Shepherd, Tracey  
**Sent:** 24 June 2015 09:04  
**To:** Maidment, Hazel  
**Cc:** [REDACTED]  
**Subject:** RE: AMENITY ON THE HIGHWAY LICENCE - RON WHITES 26 MARMION ROAD SOUTHSEA PO5 2BA - UNIFORM REF: 15/03523/AMENIT

Dear Hazel.

I understand that Gina has an issue with the application as the minimum 1.8mtr wide footway clearance is not being adhered to in the new application. Considering that this is the minimum clearance required to enable access through the area for our more vulnerable pedestrians, I would support Gina on her concerns.

Apologies and kind regards,

Tracey

[REDACTED] (Senior IEng, FIHE)

Traffic Engineer,  
Road Safety & Active Travel.

Portsmouth City Council  
Civic Offices  
Guildhall Square  
Portsmouth  
Hampshire PO1 2NE

Tel: 023 9284 1312  
Fax: 023 9268 8341

---

**From:** Maidment, Hazel  
**Sent:** 23 June 2015 16:23  
**To:** [REDACTED];

[REDACTED]  
**Subject:** AMENITY ON THE HIGHWAY LICENCE - RON WHITES 26 MARMION ROAD SOUTHSEA PO5 2BA - UNIFORM  
REF: 15/03523/AMENIT

I am writing to advise you that I have received an application from the proprietor of the above premises for permission to continue to provide highway amenities outside the premises.

The amenities consist of goods and are placed on the highway from 09:30 until 17:00 everyday.

The amenities have not changed or altered since last years' application and the purpose of this email is to enquire if you have any objections to the renewal of the licence for a further one year period.

If I do not hear from you by 7 July 2015 I will assume you have no adverse comments to make and I will issue the licence.

Thank you.

Hazel Maidment  
Licensing Assistant  
Portsmouth City Council  
Civic Offices  
Guildhall Square  
Portsmouth  
PO1 2AL  
T: 023 9283 4572  
F: [REDACTED]

[www.portsmouth.gov.uk](http://www.portsmouth.gov.uk)

**Stone, Derek**

---

**From:** Shepherd, Tracey  
**Sent:** 24 June 2015 09:04  
**To:** Maidment, Hazel  
**Cc:** Perryman, Gina; Love, Michelle; Kerens-Bathmaker, Amber; Turton, Pam  
**Subject:** RE: AMENITY ON THE HIGHWAY LICENCE - RON WHITES 26 MARMION ROAD SOUTHSEA PO5 2BA - UNIFORM REF: 15/03523/AMENIT

Dear Hazel.

I understand that Gina has an issue with the application as the minimum 1.8mtr wide footway clearance is not being adhered to in the new application. Considering that this is the minimum clearance required to enable access through the area for our more vulnerable pedestrians, I would support Gina on her concerns.

Apologies and kind regards,

Tracey

 (Senior IEng, FIHE)

Traffic Engineer,  
Road Safety & Active Travel.

Portsmouth City Council  
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Guildhall Square  
Portsmouth  
Hampshire PO1 2NE



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**From:** Maidment, Hazel  
**Sent:** 23 June 2015 16:23  
**To:**   
**Subject:** AMENITY ON THE HIGHWAY LICENCE - RON WHITES 26 MARMION ROAD SOUTHSEA PO5 2BA - UNIFORM REF: 15/03523/AMENIT

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Thank you.

Hazel Maidment  
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[www.portsmouth.gov.uk](http://www.portsmouth.gov.uk)

# Agenda Item 6

REPORT TO: LICENSING SUB-COMMITTEE

REPORT BY: LICENSING MANAGER

REPORT AUTHOR: MR DEREK STONE

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

## 1. PURPOSE OF REPORT

The purpose of this report is for the committee to consider objections received in respect of the provision of highway amenities consisting of two **tables and four chairs** at Smile and so far as this relates to the renewal (or otherwise) of a previous amenity permission granted to the premises.

2. **RECOMMENDED** that the committee determine the application.<sup>1</sup>

## 3. THE PREMISES AND PROPOSED/PERMITTED AMENITY ACTIVITIES

Name (if any) and address of premises: **Smile**  
49 Marmion Road  
Southsea  
PO5 2AT

### Amenity activities to include dates and timings:

Tables and chairs	Tuesday to Friday	09:00	15:30
Tables and chairs	Friday, Saturday	09:00	16:00
Tables and chairs	Sunday	09:30	15:00

A copy of the application under consideration is attached as **appendix A**.

## 4. BACKGROUND INFORMATION AND LICENSING HISTORY

Smile is a ground floor café situated on the north side of Marmion Road between Wilton Place and Wilton Terrace. The café can hold 38 persons internally with four outside two at each table. The pavement area outside Smile measures 2m 6cm wide. The distance between the outside edge of the table and the kerb measures 1m 43cm.

Relevant photographs and street plans are attached as **appendix B**

Waitrose is situated nearby and opposite is Friary Close. Local business premises include a travel agent, Reeds Rains, Barnardo's, Pearsons, Fat Face, Lou Lous and Southsea Rock. There are residential flats above the shops.

---

<sup>1</sup>If mindful of granting (or renewing) the permission, the committee MAY consider the imposition of further tailored conditions to ensure that the approval does not cause an unreasonable obstruction of the highway.

If mindful of revoking or refusing to renew the permission, the committee will give reasons as appropriate to the matter under consideration.

On street parking is available on the north side of Marmion Road with parking restrictions between 0800 - 1800.

A premises licence granted under the Licensing Act 2003 has been in force at the premises since April 2007. The licensable activities include the sale of alcohol Monday to Wednesday 10:00 until 17:30 Thursday to Saturday 10:00 until 21:30 and Sunday 10:00 until 16:30 together with the provision of recorded music.

The premises can open Monday to Wednesday 09:00 until 18:00 Thursday to Saturday 09:00 until 22:00 and Sunday 09:00 until 17:00.

The licence holder is G Heke Limited and the designated premises supervisor (DPS) is recorded as Mr Grahame Heke who is the applicant for this Amenity Licence.

The amenity permission history is as follows:

- April 2007 - first amenity permission granted for 2 tables and 4 chairs in an area of 11'5" x 7'5" outside of the premises, between the hours of 08:30 and 18:00.
- Permission renewed on a yearly basis with minor changes around timings.
- The 2015 amenity "renewal" application has been subject to representations and stands referred for determination by the committee.

## 5. REPRESENTATIONS RECEIVED

The representations received are attached as **appendix C** and can be summarized as

- Insufficient clear width of footway for pedestrians, persons with disabilities and/or impaired vision - this view is endorsed by the council's equality advisor.

The new amenity policy has a clear expectation that a **minimum clearance width of between 1.8 and 2.0 metres** must be maintained at all times. Members should be aware however that the premises has previously benefitted from an amenity permission for the provision of tables and chairs for a number of years.

## 6. POLICY AND STATUTORY CONSIDERATIONS

Sections 115A to 115K of the Highways Act 1980 relate to the provision of amenities on the highway. The council **MAY** grant a person permission to provide facilities for recreation and refreshment and also to use objects or structures\* on, in or over a highway for the purposes of:

- Resulting in the production of income
- Providing a centre for advice or information
- Advertising

***\*There is no definition of objects or structures which could include a multitude of different uses including tables, chairs, planters, parasols, barriers, food displays etc.***

Amenity permissions are subject to public consultation (by way of public notice on the premises and via the PCC web) for a period of 28 days. Any representations received must be considered.

Consultation also takes place with the Police and Fire authorities together with the council's equality advisor, planning and highway authority and ward councillors. This consultation procedure (with the exception of the prescribed public notice) also applies to the "renewal" process each year.

Over 70 amenity permissions have been granted around the city under delegated authority with the vast majority being for the use of tables and chairs on the highway and associated with established pubs and cafes etc.

Permissions are normally granted or renewed for a period of 12 months and are subject to the imposition of conditions together with the payment of reasonable fees.

The council requires all amenity permission holders to provide proof of third party public liability indemnity insurance to the value of £5,000,000.

The Highway Amenities policy ("the policy") was approved, following extensive consultation, by the full Licensing Committee on 13 January 2015 (minute 5/2015 refers) and is attached as **appendix D**.

The scheme of delegation was subsequently approved by full Council on 20 January 2015 (minute 9/2015 refers) with a proviso that any contested amenity application would stand referred to a panel consisting of 3 Licensing Committee members for final determination.

Underpinning the policy is an expectation that any amenities provided on the highway will make a..... ***"positive contribution and will not cause an unreasonable obstruction".....*** ***and to protect the rights and safety of those persons using the highway".....*** (page 2 of the policy refers).

Members may also wish to take into consideration the following further policy extracts:

- ***"amenities must be carefully managed"***
- ***"especially at risk are people with impaired vision or other disabilities"***
- ***"there should be adequate thoroughfare for pedestrians including wheelchair users and people with assistance dogs"*** (page 2 refers).
- ***"A minimum clearance width of between 1.8 and 2 metres must be maintained"***

Each case will however be considered on merit.

## **7. HUMAN RIGHTS**

The Human Rights Act 1998 applies to the consideration of this matter.

The committee is reminded that the applicant (or amenity permission holder) is entitled to a fair hearing and any decision(s) should be reasonable, proportionate and in the public interest.

There is no statutory right of appeal to the Magistrates' against either a decision to refuse to grant, to refuse to renew or to revoke an existing highway amenity permission nor is there any appeal against condition(s) imposed.

The council has a duty to maintain the highway and to protect the public right to the use of the highway. Should a person (or business) continue to place amenities on the highway *after* a refusal or revocation decision, they are likely to be investigated and reported for an offence of obstruction of the highway contrary to section 137 of the Highways Act 1980.

Equally, members could instruct officers to take such action in individual circumstances.

## **8. APPENDICES**

- A.** Copy of amenity application
- B.** Relevant photographs/plans
- C.** Representations received
- D.** Adopted Highway Amenity Policy

**THE COMMITTEE IS REQUESTED TO DETERMINE THE APPLICATION**

For Licensing Manager and on behalf of Head of Service





# Highways Act 1980

Application for Consent to Provide Amenities and other Facilities on the Highway

CURRENT: 14/02409/AMENIT  
 NEW: 15/02548/AMENIT  
 Date: 31.3.15  
 Receipt No: [REDACTED]



I/We hereby apply to the Portsmouth City Council for Consent to Provide Amenities on the Highway in accordance with part VIIA of the Highways Act 1980 as amended by Section 20, and Schedule 5 of the Local Government (Miscellaneous Provisions) Act 1982.

### DETAILS OF APPLICANT

1. Full Name Mr Graham Heke

2. Address [REDACTED]

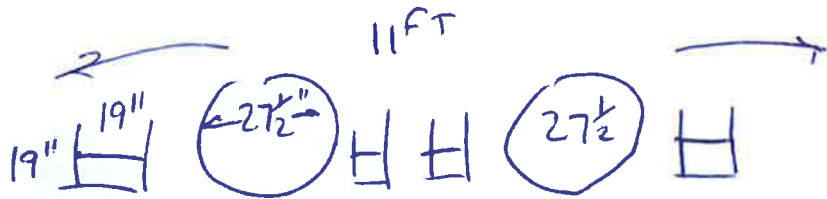
3. Nature of Business of Applicant

4. Name and Address of Business Smile  
 49 Marmion Road  
 Southsea  
 PO5 2AT

5. Preferred contact details for correspondence Cither of above Address'

### DETAILS OF AMENITIES

6. Precise location and extent of object or structure to be placed on Highway including tables, chairs and canopies etc. Together with dimensions for area required in metres.



Dimensions: Length:..... Width:.....Area:.....

7. Nature of amenities to be provided eg refreshment tables and chairs etc  
 2 Round Tables  
 4 Chairs

8. Times of the day during which amenities will be provided  
 9am - 3.30 Tue, Wed Thurs Fri  
 9am - 4.00 Sat  
 9.30 - 3.00 Sun



9. Is it proposed to sell intoxicating liquor for consumption on the highway

Yes within designated hours but dont sell hardly any alcohol

10. Is it intended for cash sales to take place on the highway

No, order & pay inside at counter

I declare that to the best of my knowledge and belief that the answers to these questions are correct.

Date 27.3.15

Signed [Redacted]

NOTE: This application together with the relevant fees (effective from November 2014):

For goods on the highway £296.00 for a new application; £169.00 for a renewal:

For table & chairs on the highway £127.00 for a new application plus:

- a) >5 m2 £244.00
- b) 5>10 m2 £483.00
- c) 10>15 m2 £728.00
- d) 15>20 m2 £966.00
- e) >20 m2 £1207.00

For annual licence renewal for table & chairs use above schedule.

Variation of licence £73.00.

The relevant fee must be forwarded to the Licensing Service, Civic Offices, Guildhall Square, Portsmouth, PO1 2AL. Cheques must be made payable to Portsmouth City Council. (Application fee non-refundable).

1. Please attach a sketch showing the extent of the amenities/structure to be placed on the highway and:-
  - i) indicating the position in relation to your own premises, and
  - ii) the position in relation to any other premises
2. Please supply a copy of your Third Party Public Liability Insurance in the sum of £5 million.
3. Please note that an official Notice in connection with the application will be issued to you. This must be displayed in the front window of your premises for 28 days.

***“Portsmouth City Council is committed to complying with the Freedom of Information Act 2000 (FOIA) which applies to all recorded information that it holds or is held on its behalf. Information that is provided to or held by the City Council will be processed and disclosed strictly in accordance with the FOIA, the Data Protection Act 1998 or other appropriate legislation”.***

*This authority is under a duty to protect the public funds it administers, and to this end may use the information you have provided on this form for the prevention and detection of fraud. It may also share this information with other bodies responsible for auditing or administering public funds for these purposes. For further information go to [www.portsmouth.gov.uk](http://www.portsmouth.gov.uk) and search for 'National Fraud Initiative'.*



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**Stone, Derek**

---

**From:** Love, Michelle  
**Sent:** 22 April 2015 14:16  
**To:** Maidment, Hazel  
**Subject:** RE: AMENITY ON THE HIGHWAY LICENCE - SMILE 49 MARMION ROAD SOUTHSEA PO5 2AT - UNIFORM REF: 15/02548/AMENIT

Thank you for these Hazel, I would not be able to support this application as there is insufficient room on the footway as per the policy.

Kind Regards

Michelle

---

**From:** Maidment, Hazel  
**Sent:** 22 April 2015 10:49  
**To:** Love, Michelle  
**Subject:** RE: AMENITY ON THE HIGHWAY LICENCE - SMILE 49 MARMION ROAD SOUTHSEA PO5 2AT - UNIFORM REF: 15/02548/AMENIT

Hi Michelle

I am back from leave today!

I have attached Jason's photo's for you.

Hazel

---

**From:** Love, Michelle  
**Sent:** 15 April 2015 10:32  
**To:** Maidment, Hazel  
**Subject:** RE: AMENITY ON THE HIGHWAY LICENCE - SMILE 49 MARMION ROAD SOUTHSEA PO5 2AT - UNIFORM REF: 15/02548/AMENIT

Hi Hazel,

I am just back from leave and the time frame for responses was yesterday, was the footway measured?

Thanks

Michelle

---

**From:** Maidment, Hazel  
**Sent:** 31 March 2015 14:07  
**To:** Love, Michelle  
**Cc:** Shepherd, Tracey; Perryman, Gina; Griffin, Marc; Turton, Pam  
**Subject:** RE: AMENITY ON THE HIGHWAY LICENCE - SMILE 49 MARMION ROAD SOUTHSEA PO5 2AT - UNIFORM REF: 15/02548/AMENIT

Hi Michelle

Unfortunately, we do not have any available this week to go and measure the footway - if you can wait till next week I can ask Jason or Kevin to pop down and measure up?

Hazel

---

**From:** Love, Michelle  
**Sent:** 31 March 2015 13:50  
**To:** Maidment, Hazel  
**Cc:** Shepherd, Tracey; Perryman, Gina; Griffin, Marc; Turton, Pam  
**Subject:** RE: AMENITY ON THE HIGHWAY LICENCE - SMILE 49 MARMION ROAD SOUTHSEA PO5 2AT - UNIFORM REF: 15/02548/AMENIT

Hi Hazel,

Can you confirm what the width of available footway is please? The amenity space requested is 900mm but as this café is 3 premises down from Lou Lou's where there is only 1.9m of available footway I would think this premises has the same.

Under the Amenities Policy and Transport and Environment Officer recommendations there needs to be 1.8m clear footway available at all times.

Kind Regards

Michelle

---

**From:** Maidment, Hazel  
**Sent:** 31 March 2015 11:49  
**To:** [REDACTED]

**Subject:** AMENITY ON THE HIGHWAY LICENCE - SMILE 49 MARMION ROAD SOUTHSEA PO5 2AT - UNIFORM REF: 15/02548/AMENIT

I am writing to advise you that I have received an application from the proprietor of the above premises for permission to continue to provide highway amenities outside the premises.

The amenities consist of tables and chairs and are placed on the highway from 09:00 until 18:00 everyday.

The amenities have not changed or altered since last years application and the purpose of this email is to enquire if you have any objections to the renewal of the licence for a further one year period.

If I do not hear from you by 14 April 2015 I will assume you have no adverse comments to make and I will issue the licence.

Thank you.

Hazel Maidment  
Licensing Assistant  
Portsmouth City Council  
Civic Offices  
Guildhall Square  
Portsmouth  
PO1 2AL  
T: 023 9283 4572  
F: 023 9283 4811  
E: [REDACTED]  
[www.portsmouth.gov.uk](http://www.portsmouth.gov.uk)

**Stone, Derek**

---

**From:** Shepherd, Tracey  
**Sent:** 31 March 2015 14:04  
**To:** Maidment, Hazel  
**Cc:** Perryman, Gina; Love, Michelle; Turton, Pam  
**Subject:** RE: AMENITY ON THE HIGHWAY LICENCE - SMILE 49 MARMION ROAD SOUTHSEA PO5 2AT - UNIFORM REF: 15/02548/AMENIT

Dear Hazel.

Referring to the photographs accompanying the application, the paving slabs shown are approximately 600mm square. It can then be established that the existing footway width, consisting of 3.5 slabs from front wall of premises to front face of kerb, is approximately 2.1mtrs wide. If the amenities take up 900mm in width the remaining footway width available to vulnerable pedestrians to negotiate the area/obstacles is 1.2mtrs. A minimum footway width of 1.8mtrs is required to allow pedestrian movements through the area.

The restricted footway clearance means that pedestrians will be encouraged into the carriageway with live traffic to negotiate the obstruction/obstacle. This will increase the risk of pedestrians being struck by passing vehicles. Considering this information I agree with Michelle's comments and suggest that the application is refused.

I hope that this is of assistance.

Kind regards,

Tracey

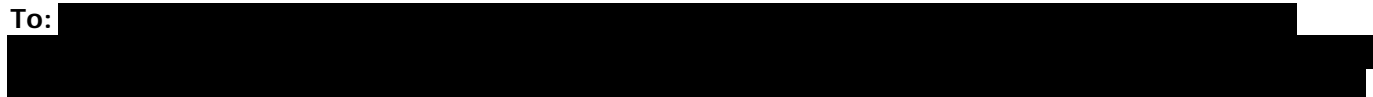
 (Senior IEng, FIHE)

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**Sent:** 31 March 2015 11:49  
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# Amenities on the Highway

Policy Guidelines, Application Process and Conditions

[www.portsmouth.gov.uk](http://www.portsmouth.gov.uk)

## Introduction & Overview

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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

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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

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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.<sup>1</sup> :
  - Alec Rose Lane
  - Cambridge Road
  - Commercial Road

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<sup>1</sup> *Adopted statement of licensing policy for period January 2011 until January 2016*

- Guildhall Square
  - Guildhall Walk
  - Hampshire Terrace
  - King Henry 1<sup>st</sup> 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 environs<sup>2</sup>
  - 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

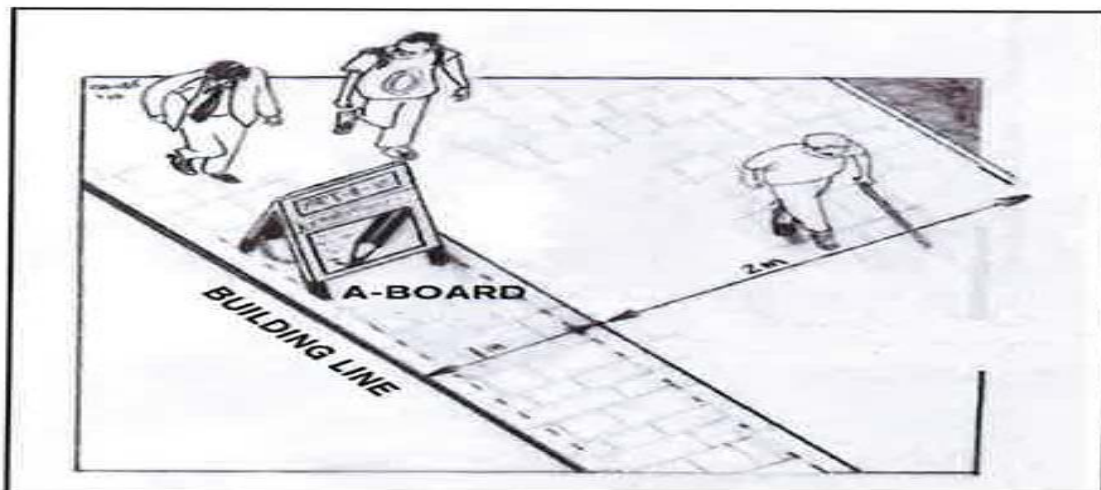
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<sup>2</sup> Commercial Road means from the ABC roundabout south to the Train Station. **NOTE**, the City Centre or Town Management team MAY consider an application for A board permission in the middle of a designated precinct area provided a minimum 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

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- 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

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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-fees.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

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### 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

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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/planning.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

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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](mailto:Licensing@portsmouthcc.gov.uk)  
**Website:** [www.portsmouth.gov.uk](http://www.portsmouth.gov.uk)

## References

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- 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

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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).**

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- 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  
Civic Offices  
Guildhall Square  
Portsmouth PO1 2AL

Telephone: 023 9283 4572  
Email: [licensing@portsmouthcc.gov.uk](mailto:licensing@portsmouthcc.gov.uk)

November 2014

[www.portsmouth.gov.uk](http://www.portsmouth.gov.uk)

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



Corporate member of  
Plain English Campaign  
Committed to clearer communication.

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