

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.¹

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.

¹If 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"***

(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 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