

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.¹

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
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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

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.

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.

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