

REPORT TO: LICENSING SUB-COMMITTEE

22nd January 2019

REPORT BY: LICENSING MANAGER

REPORT AUTHOR: DEREK STONE

**Highways Act 1980 - Provision of Highway Amenities - Bangerz 'n' Brewz
60B Victoria Road South Southsea PO5 2BT**

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 **tables and chairs** at Bangerz 'n' Brewz and so far as this relates to a new amenity application.

2. **RECOMMENDED** that the committee determine the matter.¹

3. THE PREMISES AND PROPOSED/PERMITTED AMENITY ACTIVITIES

Name and address of premises: Bangerz 'n' Brewz
60B Victoria Road South
Southsea
PO5 2BT

Amenity activities to include dates and timings:

Tables and chairs	Everyday	12:00	21:00
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A copy of the application under consideration is attached as **appendix A**. Please note the original application requested the amenity to run from 12:00 to 23:00 however the adopted Highway policy does not permit amenities to be in place after 21:00.

A copy of the plan is attached as **appendix B** together with the pictures of the proposed table, chairs and bench.

Relevant photographs are attached as **appendix C**. These photographs were taken whilst the premises were being renovated. They show kitchen appliances on the pavement and gives a good indication of how wide the pavement is, even with large kitchen appliances on the footpath.

The premises formerly traded as the Cottage Café and these premises held an Amenity Licence from May 2007 until May 2015 for two tables and four chairs outside the venue similar to this application. This authorisation that was subject to an annual renewal was not renewed in 2015 due to the premises being sold.

¹If however 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.

4. BACKGROUND INFORMATION AND LICENSING HISTORY

Bangerz 'n' Brewz is a ground floor café situated on the west side of Victoria Road South.

The pavement area outside Bangerz 'n' Brewz is narrow with a maximum width of 2.4m narrowing to 2.2m.

Local business either side of these premises are an antique shop 'Keepers of the Peculiar' and Victoriana on the corner of Victoria Road South and Marmion Road which is now vacant. There are residential flats above the shops.

A premises licence granted under the Licensing Act 2003 was granted on 9 October 2018. The licensable activities include the sale of alcohol from 12:00 until 22:00 every day.

The premises can open until 22:00.

The licence holder and the designated premises supervisor (DPS) for Bangerz 'n' Brewz Limited is the applicant James Stone.

5. REPRESENTATIONS RECEIVED

The representations received are attached as **appendix D**.

17 are signatures attached to a petition.

In summary, the main concerns appear to be:

- Pavement is too narrow
- Victoria Road South is a main road with fast traffic turning from and into Marmion Road.
- The tables and chairs when occupied would lead to unacceptable noise on a residential street.
- The consumption of alcohol on the street near residential properties.

The amenity policy has a clear expectation that a minimum of clearance width of between 1.8 and 2.0 metres must be maintained at all times. This has been achieved in the proposed amenity plan.

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. The council's equality advisor and appropriate ward councillors are consulted together with the planning and highway authority. This consultation procedure (with the exception of the public notice) also applies to the "renewal" process each year.

Over 70 amenity permissions have been granted 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 E**.

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. Copy of plan and proposed furniture
- C. Relevant photographs
- D. Representations received
- E. Adopted Highway Amenity Policy

THE COMMITTEE IS REQUESTED TO DETERMINE THE MATTER



For Licensing Manager
And on behalf of Head of Service