



# Committee report

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| Committee | <b>LICENSING SUB COMMITTEE</b>   |
| Date      | <b>21 JULY 2016</b>  |
| Title     | <b>TO DETERMINE AN APPLICATION FOR A STREET FURNITURE PERMIT UNDER SECTION 115E OF THE HIGHWAYS ACT 1980 FOR EL PATRON, 14 ST THOMAS' SQUARE, NEWPORT, ISLE OF WIGHT</b> |
| Report of | <b>WENDY PERERA<br/>HEAD OF PLANNING AND HOUSING</b>   |

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## BACKGROUND

1. A street furniture permit authorises the holder of a permit to place items on, in or over the highway. The Council can attach conditions to a permit, including the payment of reasonable charges.
2. An application for a street furniture permit is made to the council under Section 115E of the Highways Act 1980.
3. A highway is a way over which all members of the public have the right to pass and repass as of right, not on sufferance or by licence. The term Highway is extended in Section 328 of the Highways Act 1980 ("the Act") and is also set out in the Council's Policy Relating to the placing of Tables, Chairs and other objects on the Highway (otherwise referred to as the Highways Permissions Policy) dated 24 March 2015. The area which is the subject of this application falls under the above definition and has been confirmed by Island Roads as highway.
4. An application for a street furniture permit was submitted by Mr Andrew Taylor, for 'El Patron' on 9 May 2016 for permission to place tables and chairs in an area with astro turf and fencing on the highway outside the premises known as 'El Patron', 14 St Thomas's Square, Newport, Isle of Wight. The application form can be found at Appendix A.
5. A plan of the proposed trading location can be found at Appendix B, along with a photograph (for illustrative purposes only) of the style of astro-turf and fencing Mr Taylor would like to use. He has requested an area of 24 square metres as marked on the plan, and permission sought to place tables and chairs there between 10:00hrs and 22:00hrs each day.

## CONSULTATION

6. The Isle of Wight Council Street Furniture policy prescribes a 28 day consultation period, commencing the day after publication of the notice. This gives Island Roads 5 working days to erect the notice at the site to which the application relates.
7. This application for a street furniture permit was received on 9 May 2016; consultation began on 16 May 2016 and ended on 13 June 2016.
8. Throughout the consultation period the application was available to view on the Council's website.

### Relevant Authorities

9. The licensing department consults with relevant authorities. The outcome of the consultation is as follows:

| <u>Responsible Authorities</u> |                            |
|--------------------------------|----------------------------|
| Environmental Health           | No objection               |
| Fire and Rescue Service        | <b>Comments made</b>       |
| Police                         | <b>Comments made</b>       |
| Planning Services              | <b>Objection</b>           |
| Island Roads                   | <b>Objection</b>           |
| Local Member                   | No Comment                 |
| Parking Services               | No Comment                 |
| Commercial Services            | No Comment                 |
| Highways PFI team              | No Comment                 |
| Newport Parish Council         | <b>Comments/Objections</b> |

Comments from the above consultees can be found at Appendix C.

### Other Persons

10. One other valid representation has been received from the Vicar of Newport Minster. This can be found at Appendix D of the report.
11. All representations were given by hand to Mr Taylor by Licensing Officers on Friday 11 June 2016 so that he could consider them over the weekend before the consultation period ended, and he was advised to submit his comments on each of the points raised in the representations as soon as possible so that any negotiation between parties could take place at the earliest opportunity.
12. Mr Taylor was advised that if agreement could not be reached, his application would need to be determined at a hearing of the Licensing Sub Committee.

13. Emails were sent to Mr Taylor on 14 June 2016 and again on 20 June asking for his comments with regard to the representations made. He advised on 23 June that the comments would be received from his legal team no later than Monday 27 June. No comments were received.
14. A further email was sent to Mr Taylor on 30 June, advising that if comments were not received by the end of the day, the matter would proceed to a hearing. The officer offered to deal directly with his legal team if necessary, but still nothing was received.
15. On 4 July a final email was sent informing Mr Taylor that the application would now be determined by the Licensing Committee and that he would be informed of the date and time of the hearing. He responded the following day stating that he had only just seen the emails of 30 June and 4 July and felt that although there may be some 'middle ground' with some parties, he felt it would be best decided at a hearing. He was again requested to supply comments on what 'middle ground' he was referring to, as ideally the Committee would like as much information as possible before the hearing.
16. Mr Taylor's comments were finally received as the report was being written, and are attached at Appendix E. His comments have addressed some of the concerns of the parties making representations, however there are some matters that still require determination by the Committee.
17. Due to the period of time taken waiting for comments in order to try and reach agreement by negotiation the 20 working days stated in the policy for determination has been exceeded. This is however, not a statutory timescale.

#### FINANCIAL / BUDGET IMPLICATIONS

18. Broadly, Council expenditure on licensing matters, and specifically those administered and enforced through Regulatory Services, balances income generated from fees.

#### LEGAL IMPLICATIONS

19. The Council is under a duty to assert the right of the public to use and enjoy any highway for which it is the highway authority, and to prevent obstruction or stopping up of a highway so far as is possible (Section 130 of the Highways Act 1980 ("the Act")).
20. Section 137 of the Act creates an offence for wilfully causing an obstruction to a highway. A person in breach of the section is liable to a fine not exceeding level 3 on the standard scale (currently £1,000). Section 143 of the Act enables the Council to take action against structures erected on the highway. However, both of these provisions enable such obstructions to be authorised.
21. Section 137ZA of the Act provides that where a person is convicted of an offence under section 137 and it appears to the court that the obstruction is continuing, and it is in that person's power to remove the cause of the obstruction, the court may, in addition to or instead of imposing any punishment, order him to take, within such reasonable period as may be fixed by the order, such steps as may be specified in the order for removing the cause of the obstruction.

22. The Council can authorise a wide variety of items that may otherwise be considered obstructions under Section 115E of the Act, a licence granted under that section will provide a lawful excuse to have the objects covered by the licence on the highway specified within it.

#### Implications under the Crime and Disorder Act 1998

23. Members are advised that without prejudice to any other obligation imposed on it, it shall be the duty of each authority to which this section applies to exercise its functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area.

#### Human Rights

24. Members are advised that this application must be considered against the background of the implications of the Human Rights Act 1998.
25. It is considered that there is one convention right, which needs to be considered in this context:

#### Article 6 - Right to a Fair Trial

26. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.
27. The Licensing Authority acknowledges the right of businesses in its area to operate, but equally acknowledges the fact that this must be balanced against the need to protect public safety, to prevent crime and disorder and nuisance, and to ensure that any street furniture does not affect the visual impact of the surrounding area. The Sub-Committee needs to be clear as to the rights granted and the need to ensure that the reasons given for any interference are proportionate and in accordance with the Council's legitimate aim.

#### EQUALITY AND DIVERSITY

28. There is no requirement for an equality impact assessment to be carried out.

#### OPTIONS

29. Option 1: To grant a street furniture permit in accordance with the application
30. Option 2: To grant a street furniture permit with the conditions specified in this report and with any other conditions or amendments the Committee deem necessary.
31. Option 3: To refuse to grant the street furniture permit.

#### RISK MANAGEMENT

32. With regard to Options 1: Should the street furniture permit be granted, with or without conditions, the concerns raised by objectors to this application may not be addressed. The objectors will have no right of appeal.

33. With regards to Option 2: Should the Committee wish to attach conditions, they should only be those which are relevant to the application and which relate to one of the considerations listed in the policy. If the Committee decide that significant amendments are necessary, such as an alternative location, this may require a further period of consultation.
34. With regard to Option 3: Should the Committee refuse to grant a street furniture permit, no furniture will be permitted to be placed in the area requested. There is no right of appeal against the refusal of a street furniture permit.

## EVALUATION

35. In making its decision, the Licensing Sub-Committee should have regard to the Isle of Wight Council's Policy "Permissions for the Placing of Tables, Chairs and Other Objects on the Highway" 2015.
36. The committee must have regard to all the evidence it hears, and should assess the impact of the grant of this application when making its decision on:
  - Public Safety
  - Prevention of Crime and Disorder
  - Prevention of Nuisance
  - Visual Impact
37. Mr Taylor has applied to trade for seven days per week, between 10:00hrs and 22:00hrs each day. Island Roads have pointed out that there are local licensed markets held in this area on Tuesdays and Fridays and therefore the applicant would not be able to place street furniture in the area applied for on these days until later in the day. The vicar of Newport Minster has also made reference to the fact that the Farmers' market operates in that area on Fridays.
38. The representations also relate to the following concerns:

### Public Safety

39. Island Roads on behalf of the Highways Authority have expressed concern regarding the style of the proposed fencing, and the potential for it to cause injury to anyone who may stumble onto it, also that the leg supports and the proposed astro-turf floor covering are thought to present a trip hazard to passing pedestrians. He has suggested that an alternative 'post and banner' system which presents less of a risk may be more suitable.
40. The Fire Service, whilst not objecting to the application, has stated that access must be kept clear for emergency vehicles at all times (minimum 3m) and that all hydrants are kept clear and free from obstruction, and that all fire exits and escapes from neighbouring buildings must be kept clear at all times. Hampshire Constabulary has expressed concerns that there should be sufficient distance between the edge of the proposed area and the church to allow access for emergency vehicles and accommodate a busy pedestrian walkway. **These concerns will be addressed by attaching the relevant standard conditions (see Appendix F).**

## Public Nuisance

41. Island Roads on behalf of the Highways Authority has expressed concern that, as the proposed area is not directly adjacent to the property, it cannot be adequately monitored or supervised. He has also suggested that if a permit is to be granted, conditions should be attached relating to the removal of furniture outside of operating hours or at the request of the Council or Island Roads, and the control of litter. **This will be addressed by attaching the relevant standard conditions (see Appendix F).**

## Crime and Disorder

42. Hampshire Constabulary has stated that any street furniture, if left in situ outside of operating hours, would significantly increase the risk of crime and disorder for the area. **This will be addressed by attaching the relevant standard conditions (see Appendix F).**

## Visual Impact

43. The Planning Officer has raised significant concerns over the proposed fencing, stating that it would be considered to form an enclosure and would be unacceptable as it would significantly impact on the setting of the church, which is a Grade A listed building protected by law, and the War Memorial. The officer has stated that the square is traditionally an open public meeting space and that any enclosure would be in a thoroughfare part of the square and would be unacceptable for these reasons.
44. The Parish Council, whilst welcoming an 'alfresco' atmosphere in the town centre, also believe that the application presents an inappropriate concept encroaching into the square towards the War Memorial and the impact on the character and appearance of the area. They feel that the position and the size is unacceptable as it creates an obstruction to the free flow of pedestrians and detracts from the open ambience of the square. They believe that the proposal would be more suitable in a seaside location or as a short term facility at a sports tournament.
45. The Parish Council have suggested that the area for the proposed furniture may be more suitable in a position along the side of the building, a comment also made by the Island Roads. Secondly, that a more appropriate scheme (similar to the nearby premises known as NOSH) is devised, with more appropriate cordons or barriers to mark out the limits of the area.
46. The police have also disagreed that the nature of the proposed furniture is in keeping with the local area, due to the fact that no other nearby premises have a similar type of enclosure.
47. The vicar of Newport Minster also believes that the style of the proposed enclosure is not in keeping with the ambience of the Square, and that it would cause limitations for the use of the Square, for example for Parades and funerals where the Square is fenced off for the public to gather in an organised manner. The vicar has echoed the feelings of the Parish Council that the style of furniture and barriers provided by the nearby 'NOSH' would be more acceptable.

48. A list of the standard conditions is attached at Appendix F for the Committee's information.
49. Officers believe that conditions found within the standard conditions attached to street furniture permits will address some of the concerns raised.
50. The Committee can attach any other additional conditions if they deem it appropriate, should they be minded to grant a permit.
51. It would seem that the outstanding issues for the Committee to determine are:
  - In respect of the days when licensed markets are held in the Square (currently Tuesdays and Fridays), the Committee need to determine whether to either prevent the placing of furniture completely on those days, or until after the licensed markets have left the Square. Should the Committee be minded to grant a permit, they could consider attaching a special condition worded as follows:
 

**No street furniture shall be displayed or utilised by the permit holder on the days (or times) in which the markets are due to be present within St Thomas's Square, Newport.** This is similar to another nearby establishment which also has this condition attached.
  - Whether to allow the proposed picket style fencing and astro-turf floor covering, or whether they are deemed a possible risk to public safety and out of keeping with the surrounding area. If so, whether to require an alternative method of post and banner system to mark out the area to be covered by the permit, if granted.
52. Should the Committee believe that the area to be covered by a permit would be more acceptable in another location, i.e. to the side of the building, this may require further consultation with relevant parties.
53. Members are reminded that there is no right of appeal against the grant or refusal of a permit and that the permit can be revoked by the council at any time. The exercise of the council's discretion is ultimately subject to challenge by way of Judicial Review.

#### RECOMMENDATION

54. It is recommended that a permit is granted for the area requested, subject to the standard conditions and other special conditions or restrictions as are deemed necessary.

#### APPENDICES ATTACHED

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|------------|---|
| Appendix A | Application for a Street Furniture Permit   |
| Appendix B | Plan of the proposed area to which the application relates, and photograph of similar astro turf and fencing, for illustration purposes |

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| Appendix C | Representation from Consultees    |
| Appendix D | Representations from Other Person |
| Appendix E | Applicant's Response              |
| Appendix F | List of Standard Conditions       |

#### BACKGROUND PAPERS

- Isle of Wight Council Policy on Permissions for the placing of Tables, Chairs and Other Objects on the Highway:  
<https://www.iwight.com/azservices/documents/1483-IWC-Highways-Permissions-Policy.pdf>

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