

Report To Regulatory sub-committee

17 December 2012

Item

3

Report of Head of Citywide Services

Subject Highways Act 1980: Application for the renewal of a licence to place tables and chairs on the highway – The Gardeners Arms PH 2-4 Timberhill Norwich

Purpose

To ask members to determine an application to place tables and chairs on the highway.

Recommendation

That members determine the application for the renewal of a licence to place tables and chairs on the highway submitted in respect of The Gardeners Arms PH 2-4 Timberhill Norwich.

Financial Consequences

The financial consequences of this report are nil.

Corporate Objective/Service Plan Priority

The provision of outdoor refreshment facilities can enhance the character and vitality of an area and contribute to Norwich as a vibrant city of culture.

Contact Officers

Ian Streeter, licensing manager

Phone No
212439

Background Documents

None

References

Report and minutes regulatory sub-committee: 13 May 2008; 17 February 2009, 21 February 2011 and 21 November 2011.

Background

1. Section 115E of the Highways Act 1980 (The Act) provides for a council to grant a person permission to use objects or structures on certain categories of highway for a purpose which will result in the production of income. The Act also provides for a council to attach such conditions as they think fit to a permission granted under Section 115E.
2. The Act gives councils a wide discretion to determine such applications and to impose conditions. Each case must be considered on its own merits with due weight being given to relevant considerations only. Existing policies or guidelines should not be applied so rigidly that an exercise of discretion in each individual case is precluded. The council has adopted standard conditions in respect of tables and chairs licences and these can be added to or amended depending on the circumstances of each individual application.

The Application

3. An application to renew an existing licence to place tables and chairs on the highway has been received from Philip Cutter in respect of an area outside The Gardeners Arms 2-4 Timber Hill Norwich. The application is seeking to renew the licence for a period of three years. This particular licence was granted by the Regulatory sub-committee at their meeting on 21 November 2011 and a copy of the licence and the conditions placed upon the permission is attached as appendix A to the report.

Licensing history

4. A licence granting permission to place tables and chairs outside the Gardeners Arms was first granted in September 1996. Applications to renew this licence have previously been considered by the council's Regulatory sub-committee at their meetings on 13 May 2008, 17 February 2009 and 21 February 2011. As mentioned in paragraph 4 above, the most recent licence was granted at the Regulatory sub-committee meeting in November last year. A copy of the minutes of this meeting is attached as appendix B to the report.
5. Members will note from the minutes at appendix B that the licence granted on 21 November 2011 was approved subject to the entrances to the application premises not being included within the area licensed for tables and the licence being subject to the adopted standard conditions and the following additional conditions:
 - if the premises are open and the premises licence holder wishes to make use of the licence then the maximum number of tables and chairs noted on the licence shall be placed in the licensed area during the hours of operation of the licence.

- barriers will not be required to be provided around the entrances of the premises.
6. Although granted on the 21 November 2011 the licence was, due to unavoidable resource issues, not issued until the 1 February 2012. During this period the licence-holder was under the impression that the licence had been issued subject to the standard conditions only and did not include the two additional conditions set out in paragraph 5 above. The licence-holder's legal representative also held this view and both he and the licence-holder subsequently received written confirmation of the licence conditions. A copy of the letter to the licence holder is attached as appendix C, together with an extract from a letter sent to Mr Foskett of Moss and Leakey Opticians, who had objected to the grant of the licence, confirming the position in respect of the licence conditions.

Consultation

7. Comments on the application have been sought from the Norfolk Constabulary and Norfolk Fire Service, both of whom have no objections to the proposals. Their written responses are attached as appendix D.
8. The views of the council's planning, transportation and environmental protection sections have also been sought. The council's Principal Transportation Officer has responded on behalf of planning and transportation and his comments on the current application are shown in paragraph 9 below. His comments on the applications to renew previous licences considered by members in February 2009 and 2010 and the grant of the existing licence in November 2011 are attached as appendix E.
9. Principal Transportation Officer comments:-

This most recent objection refers (in point 3) back to previous correspondence relating to highways issues that Mr Foskett considered unacceptable. I have already answered these points comprehensively in my previous notes, and as there has been no change in the guidance since I wrote them, I stand by their content, and continue to have no objection to the retention of these tables and chairs on highways grounds

10. Included with the comments from environmental protection at appendix F is a monitoring log dated from February to October 2012 which details 29 separate observations of the licensed area during this period.

Objections

11. Objections to the application have been received from Moss and Leakey Opticians and Kevin Hardbottle of Norwich Mobile Ophthalmic Ltd, copies of which are attached as appendix G.
12. The principal grounds of objections from Moss and Leakey are: nuisance and

Licensing Act 2003

13. The Gardeners Arms hold a premises licence under the Licensing Act 2003 that permits the retail sale of alcohol every day between the hours of 0700 and 01:30. The licence also permits the supply of alcohol for consumption both off and on the premises. The conditions consistent with the Operating Schedule in respect of The Gardeners Arms premises licence are attached at Appendix H.
14. The Licensing Act 2003 provides for a person living or working in the vicinity of a licensed premises to apply for a review of a premises licence, if the grounds for the review relates to one of the licensing objectives, that is:-
 - a. Prevention of Crime and Disorder
 - b. Promotion of Public Safety
 - c. Prevention of Public Nuisance
 - d. Protection of Children From Harm
15. The council has not received an application to review the premises licence held in respect of the Gardeners Arms.



NORWICH CITY COUNCIL

Highways Act 1980, Part VIIA – Provision of Amenities
on Pedestrian Ways

THE CITY COUNCIL OF NORWICH (hereinafter called "the Council") in exercise of the provisions of Section 115E of the Highways Act, 1980, hereby grant **Mr Philip Cutter** ("the Licensee") permission, subject to the following conditions, to place tables and chairs ("the objects or structures") to accommodate a maximum of **8** tables and **24** chairs on the area of the public highway known as **2 - 8 Timberhill Norwich NR1 3LB** shown coloured red on the attached plan ("the application site") for the purposes of providing refreshment in connection with the premises known as **The Gardeners Arms & Murderers Cafe Bar** ("the premises") from **21st November 2011** to **20th November 2012**.

The conditions of this Licence are:

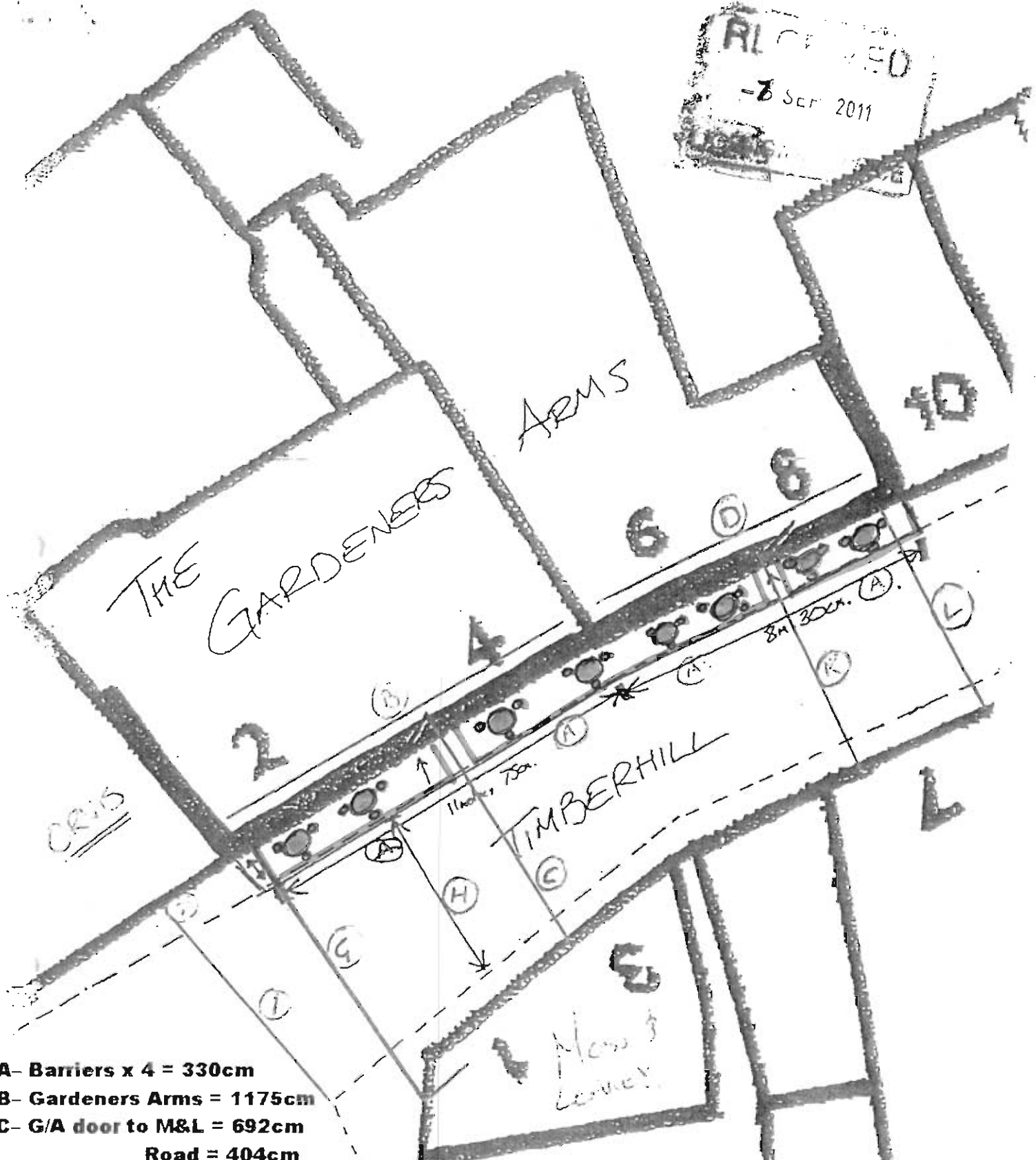
- 1 The Council's reasonable expenses in connection with the granting of this permission shall have been paid and the annual fee starting with the date of this permission shall have been paid before the permission is first exercised.
- 2 The Licensee shall indemnify the Council against any claim whatsoever, in respect of injury, damage or loss arising out of the grant of this permission other than injury, damage or loss which is attributable to the negligence of the Council.
- 3 The objects or structures shall be placed only on the licensed area and on no other part of the public highway.
- 4 The objects or structures shall be used only for the purposes stated above and only in connection with the premises.
- 5 The objects or structures shall be removed from the public highway forthwith upon the direction of a Police Constable in uniform or a Traffic Warden.
- 6 The objects or structures shall be removed from the public highway forthwith to enable the passage of any emergency service vehicles or any vehicle engaged on the repair or maintenance of the public highway or apparatus within the public highway or any other vehicle authorised by the Council to proceed on the public highway.
- 7 Permission for the tables and chairs is granted from **everyday between 08:00 to 23:30** (subject to earlier termination under clause 13).
- 8 No amplified music or live music shall take place on the licensed area.

- 9 The tables and chairs, the subject of this Licence, shall be removed from the licensed area each day outside of the licence period.
- 10 The Licensee shall ensure that the licensed area is mainly enclosed by a barrier that is in keeping with the visual appearance of the area, not less than 800mm high and with no more than 150mm between the base rail and the ground, or other design as previously agreed in writing by the Council. Neither the barrier nor other furniture should carry strident advertising that goes beyond the purpose of discreetly identifying that the pavement cafe is associated with a particular business.
- 11 The Licensee undertakes to ensure that the licensed area is closely monitored and kept clean and tidy at all times.
- 12 No alteration to the highway surface shall be permitted to be carried out by the Licensee in implementing this Licence.
- 13 The Council may, by service of a notice in writing on the Licensee or owner of the premises, withdraw the Licence forthwith:-
 - (a) in an emergency or in the event that the Council considers the exercise of the Licence causes a substantial and unreasonable obstruction of the right of the public to pass or re-pass on the public highway,
 - (b) if any condition of this permission is broken,
 - (c) if the Council considers it to be necessary in connection with the exercise of any of its functions or the functions of any statutory undertaker or public utility,
 - (d) for any other reasonable cause.
- 14 The Licensee shall inform the Council's Head of Legal and Democratic Services in writing of any change in the owner or occupier of the premises within one month of that change.
- 15 This permission is for tables and chairs and barriers only. No other items, for example space heaters, are permitted by this licence.
- 16 If the premises are open and the premises licence holder wishes to make use of the licence then the maximum number of tables and chairs noted on the licence shall be placed in the licensed area during the hours of operation of the licence.
- 17 Barriers will not be required to be provided around the entrances of the premises

DATED 1st February 2012

Head of Democratic & Regulatory Services

RECORDED
 - 8 Sep 2011



- A- Barriers x 4 = 330cm
- B- Gardeners Arms = 1175cm
- C- G/A door to M&L = 692cm
 Road = 404cm
 Our Path = 153cm
 Opp. Path = 135cm
- J- Murderers Cafe Bar = 830cm
- E- Tables x 7 = 70cm
- F- Chairs x 21 = 46cm
- G- Moss & Leakey door to
 Gardeners Arms Wall = 726cm
- H- Road Average from corner
 (Before road widens) = 690cm
 Road = 423cm
 Our Path = 131cm
 Opp. Path = 136cm

- I- Road at widest part of path Near M&L
 Road = 438cm
- J- ORVIS Path = 133cm
 Opp. Path = 135cm
- K- Road Across From cafe Bar Door = 632cm
 Road = 363cm
 Our Path = 136cm
 Opp. Path = 133cm
- L- Cafe Bar Across to Nail bar = 611cm
 Road = 372cm
 Our Path = 120cm
 Opp. Path = 119cm



REGULATORY SUB COMMITTEE

2pm – 7.10pm

21 November 2011

Present: Councillors Sands (S) (Chair), Kendrick (sub for Councillor Driver),
Stammers, Stephenson, Thomas

Apologies: N/a

1. APPOINTMENT OF CHAIR

RESOLVED to appoint Councillor Sands (S) as chair for the meeting.

2. APPLICATION FOR THE GRANT OF A LICENCE TO PLACE TABLES AND CHAIRS ON THE HIGHWAY – THE GARDENERS ARMS PH, 2-4 TIMBERHILL, NORWICH

(The applicant, the co-owner and their solicitor and members of the public attended the meeting for this item).

The senior licensing officer presented the report and the applicant's solicitor commented on the background to the application.

The committee also heard from an objector as well as his barrister, drawing their attention to breaches of the current tables and chairs licence as well as the noise nuisance and disturbance caused. Other members of the public disputed the level of noise nuisance and disturbance caused and spoke in support of the application which they considered would continue to encourage an increased footfall in the area.

(The applicant, the co-owner, their solicitor, the senior licensing officer and members of the public left the meeting at this point).

Following discussion it was:-

RESOLVED unanimously:

- 1) that the main issue of noise of persons outside the pub drinking was not felt to be a nuisance;
- 2) the committee noted the breaches of the licensing conditions but that these were not serious enough to justify refusal of the application;

- 3) to therefore approve the application for the grant of a licence to place tables and chairs on the highway submitted in respect of The Gardeners Arms PH, 2-4 Timberhill, Norwich and that:
- a. the entrances to the application premises shall not be included within the area licensed for tables and chairs;
 - b. the licence be subject to the adopted standard conditions and the following additional conditions:
 - i. if the premises are open and the premises licence holder wishes to make use of the licence then the maximum number of tables and chairs noted on the licence shall be placed in the licensed area during the hours of operation of the licence;
 - ii. barriers will not be required to be provided around the entrances of the premises.

(The applicant, the co-owner, their solicitor, the senior licensing officer and members of the public were readmitted to the meeting and informed of the decision minuted above).

Citywide Services
Public Protection (Licensing)
City Hall
St Peters Street
Norwich NR2 1NH

Mr P Cutter
The Gardeners Arms PH
2-8 Timberhill
Norwich
NR1 3LB

16 February 2012

Your reference

Our reference 11/01678/TABCHA

Dear Mr Cutter

**Re: Highways Act 1980:
Application for licence to place tables and chairs on the highway –
The Gardeners Arms PH 2-8 Timberhill Norwich NR1 3LB**

I write further to your application to place tables and chairs on the highway outside The Gardeners Arms PH 2-8 Timberhill Norwich NR1 3LB, which was considered by the council's Regulatory sub-committee on 21 November 2011. As you are aware, the sub-committee resolved to approve the application subject to the council's standard conditions for tables and chairs plus two additional conditions as follows:

- If the premises are open and the premises licence holder wishes to make use of the licence then the maximum number of tables and chairs noted on the licence shall be placed in the licensed area during the hours of operation of the licence; and
- Barriers will not be required to be provided around the entrances of the premises.

A tables and chairs licence has been issued to you which details the maximum number of tables and chairs permitted; the conditions which are attached to the licence; and a plan denoting the licensed area.

I have received a complaint from Moss and Leaky Opticians that the licence is not being operated in accordance with the attached conditions, specifically that the maximum number of tables and chairs are not being placed in the licensed area when the premises are open. We spoke about this matter last week when I reminded you of the additional conditions attached to your licence by the sub-committee and am writing to confirm these. I understand that the council's enforcement officer Tony Shearman has recently visited you to re-affirm these conditions also.

The complaint from Moss and Leakey also highlighted an incident which occurred on the 30 January 2012. I appreciate that you have already notified me of this incident, but I would be grateful if you could confirm in writing exactly what occurred and how you and/or your staff managed the situation. I have also written to the police asking for their input concerning this matter.

I look forward to hearing from you and should you require clarification in respect of any of the conditions attached to your tables and chairs licence please do not hesitate to contact me.

Yours sincerely

Ian Streeter
Licensing Manager

Norwich City Council
City Hall
Norwich
NR2 1NH

9th February 2012

Mr D Foskett
MOSS & LEAKEY
1 Timberhill
Norwich
NR1 3JZ

Your reference :

Our reference :CN 32915 / 3656128
(please quote this reference when contacting us)

Dear Mr Foskett

**Complaint of nuisance and breach of tables and chairs licence conditions
Gardeners Arms public house Timber Hill Norwich**

I refer to your email dated 31 January 2012 to Jerry Massey director of regeneration and development regarding the above licence.

As you are aware, on 21 November 2011 the council's Regulatory sub-committee resolved to approve an application in respect of the Gardeners Arms public house for the grant of a licence to place tables and chairs on the highway. As you have stated in your email, the licence was granted subject to the council's standard conditions for tables and chairs licences plus two additional conditions as follows:

- If the premises are open and the premises licence holder wishes to make use of the licence then the maximum number of tables and chairs noted on the licence shall be placed in the licensed area during the hours of operation of the licence; and
- Barriers will not be required to be provided around the entrances of the premises.

Following the committee hearing, the council sent you written confirmation of the sub-committee's decision together with details of the matters members took into account and the reasons for their determination. The applicant for the licence, Mr Cutter, was present at the sub-committee hearing when the council's legal advisor advised those present of the decision, including the imposition of the two conditions above.

However, written confirmation in the form of the tables and chairs licence has only recently been issued to Mr Cutter. This confirms that the maximum number of tables and chairs is 8 tables and 24 chairs.

The council's licensing manager has written to Mr Cutter reminding him of the conditions attached to his licence and in particular that the maximum number of tables and chairs noted on the licence shall be placed in the licensed area during the hours of operation of the licence. However, this licence condition does not specify any requirements in relation to either the positioning or spacing of the tables and chairs.

It have arranged for the council's enforcement team to continue to regularly monitor the area to which the tables and chairs licence applies, to ensure that the licence conditions are being complied with. Any breaches will be noted and the necessary action will be taken in accordance with the council's adopted enforcement policy.

The council have written to both the police and Mr Cutter concerning the incident on 30 January 2012. When their responses have been received the council will consider the matter in relation to the tables and chairs licence. I should point out that under the Licensing Act 2003 (the Act) an 'interested party', which includes a business in the vicinity of a premise licensed under the Act, can apply to review the premises licence.

Further information on the review procedure is available on the council's website via the following link:

<http://www.norwich.gov.uk/Environment/EnvironmentalHealth/Licensing/Pages/Licensing-ReviewOfPremisesLicences.aspx>



Mr Ian Streeter
Licensing Manager
Norwich City Council
City Hall
St Peters Street
Norwich
NR2 1WB

The Licensing Team
Floor 4 Vantage House
Norwich
Norfolk

www.norfolk.police.uk
Non-Emergency Tel: 101

Date: 4th December 2012

Dear Mr Streeter

Application for Renewal of Table & Chairs Licence – Gardeners Arms, Timberhill

I can confirm that we have received notification of the application for the three year renewal of the existing tables and chairs licence for the Gardeners Arms, Timberhill, Norwich, NR1 3LB.

The Police acknowledge the objections to this renewal on the grounds of nuisance made by Moss and Leakey Opticians. According to the Control and Dispatch Centre logs of calls made to the Police, there have only been the following incidents involving patrons outside within the tables and chairs area at the venue since 1st January 2012 to present date:

30th January 2012 – 16:23 hrs – Phillip Cutter advised that a male who is barred from the premises has been loitering outside and has then tried to enter. An altercation followed when the male was ejected. A further call was received from David Foskett during which it was alleged that the male was thrown up against the glass of the Opticians. The male left prior to Police attendance. Police visited both the premises and the Opticians, and viewed the CCTV for the Opticians and this did not show the male being thrown against the window or a nearby lamp post.

7th July 2012 – 17:26 hrs – David Foskett advised that there were people drinking outside their Opticians and that they think they are from the premises and that this is a breach of the licence. Police were unable to attend.

25th August 2012 – 14:22 hrs – Member of staff at the Opticians reported a large group of football supporters all drinking outside that were singing and swearing. The group had already left prior to Police attendance.

There have been no further reports of incidents or complaints of noise/nuisance outside the premises around the area of the tables and chairs therefore the Police have no objections to the renewal of the licence.

If you wish to discuss this further, please do not hesitate to contact me on the above telephone number

Yours faithfully,

Sue Woods
Licensing Officer



Streeter, Ian

From: Allison, Tim
Sent: 06 December 2012 09:38
To: Streeter, Ian
Subject: Gardeners Arms Tables & Chairs Licence

Dear Ian,

Following our conversation regarding the renewal of this licence I make the following comment:

As the width of the area used (from building wall into roadway) has not been extended since the last renewal, which did not raise us any concerns, there will be no objection from Norfolk Fire & Rescue Service to this application to renew.

Regards

Tim

Tim Allison
Fire Safety Advisor
Norfolk Fire & Rescue Service

Central Fire Safety
Carrow Fire Station
Bracondale
Norwich
NR2 1EE

Excuses Kill. Get a Smoke Alarm.



APPENDIX E

Note for Ian Streeter

Gardeners Arms PH – Timberhill

I have been sent a copy of an objection to the renewal of the License of The Gardeners Arms, Timberhill, received from David Foskett and Nedarajah Sasitharan. This note has been prepared as a response to the points made in that correspondence where they relate to issues within the Public Highway

Guidance

The objection specifically cites two Government publications, namely Manual for Streets (MfS) and Inclusive mobility (IM). Firstly, these are both guidance, and do not contain 'standards'. This is important, because the whole point of guidance is that it is employed with consideration. Previous advice on Highways design such as that contained in the forerunner to MfS focussed on a standard approach, largely giving priority to vehicular based movement. MfS in particular sought to reverse that approach. It is particularly important to note that much of the advice that is contained in MfS had been practised here in Norwich for many years prior to its publication. The main changes in approach the MfS recommends (over this previous standards based approach, which as I have said was not used in Norwich anyway, are detailed in paragraph 1.6.1. I've highlighted (in *italics*) those areas that I believe to be most relevant here:

- *applying a user hierarchy to the design process with pedestrians at the top;*
- *emphasising a collaborative approach to the delivery of streets;*
- *recognising the importance of the community function of streets as spaces for social interaction;*
- *promoting an inclusive environment that recognises the needs of people of all ages and abilities;*
- reflecting and supporting pedestrian desire lines in networks and detailed designs;
- developing master plans and preparing design codes that implement them for larger-scale developments, and using design and access statements for all scales of development;
- creating networks of streets that provide permeability and connectivity to main destinations and a choice of routes;
- moving away from hierarchies of standard road types based on traffic flows and/or the number of buildings served;
- *developing street character types on a location-specific basis with reference to both the place and movement functions for each street;*
- encouraging innovation with a flexible approach to street layouts and the use of locally distinctive, durable and maintainable materials and street furniture;
- using quality audit systems that demonstrate how designs will meet key objectives for the local environment;
- designing to keep vehicle speeds at or below 20 mph on residential streets unless there are overriding reasons for accepting higher speeds; and

- using the minimum of highway design features necessary to make the streets work properly

It is also guidance, and recognises that ideal footway widths might not be possible within the available width, but suggests that ideally, outside shops 4.5m width would be desirable.

I fully agree with the objectors concerning the application of local design guidance, embracing the principles of MfS, and this is indeed what our own street design standards do. However, Norwich is an historic City, and to blindly apply width standards in existing historic streets (where it is often impossible to achieve any of the suggested widths, even those in MfS) would clearly be inappropriate. We thus suggest that any pavement cafes should 'leave sufficient footway space for the volumes of pedestrians using the street'.

The important point here is the MfS tells us that we should apply local guidance embracing MfS. Therefore applying guidance that has been prepared for Wolverhampton or indeed Hammersmith and Fulham is not necessarily appropriate for Norwich.

Context

Timberhill is a pedestrian area. The entire width of the street is pedestrian pavement, but has been constructed to take the weight of necessary vehicles. It has been designed to achieve the effect of a street with a vehicular carriageway, but does not have a traditional carriageway and kerb edge. As with many historic streets, the width varies, but along much of its length it is too narrow for two large service vehicles to pass each other without striking buildings to either side. Access to the street is permitted for access and servicing only, and the street is one-way for vehicles from Golden Ball Street to Red Lion Street. Parking is not permitted. There have been no injury accidents on Timberhill during the last 15 years.

Comments on objections

'Existing footway is as low as 1.2m'

The entire width of the street is footway, as it is a pedestrianised area. There is therefore around 6 metres available for pedestrians (4.7m with the tables and chairs in place that well exceeds the recommended width)

'Existing vehicular carriageway width is 3.6m'

The entire width of the street is capable of supporting vehicles and the differentiation is for streetscape purposes within a pedestrian area, and the total running width available is therefore around 6m, and around 4.7m with the chairs and tables in place. In any event, MfS continues to say that 'to simply reach a fire the access could be reduced to 2.75m', and the Fire Brigade are always consulted as part of street redesign, and again as part of any application for licences on the Highway.

In the unlikely event that a fire was to break out in an adjacent building, I think it reasonably likely that the Fire Brigade would move any tables and chairs that were causing an obstruction, and indeed any vehicle loading in the vicinity.

A notional 5.1 m shared pedestrian and emergency vehicle pathway leaves only 0.6m available between opposite frontages

This dimension is provided from guidance produced by other local authorities for their own use, and as I have already said is therefore not necessarily applicable in Norwich. However, even if it were, it is still guidance, and I have spoken to both Hammersmith & Fulham and Wolverhampton who have advised me that they do not apply this dimension rigidly (as indeed in the spirit of MIS they should not), and the dimension is suited to two-way operation, whilst Timberhill is of course, only one-way. Additionally, there are many pedestrianised streets across the country which are used as emergency accesses to a wide area. In the case of Timberhill, the only requirement for access other than servicing would be in the event of an emergency in Timberhill itself, which hopefully is a very rare event indeed.

'The guidelines require authorities to take into account parking (problems) and the level of parking enforcement' MIS 7.2.2

Yes they do, but what MIS actually says is 'Carriageway widths should be appropriate for the particular context and uses of the street. Key factors to take into account include: whether parking is to take place in the carriageway and, if so, its distribution, arrangement, the frequency of occupation, and the likely level of parking enforcement (if any).'

Parking is not permitted on Timberhill, and as the street is within the City Centre levels of parking enforcement are high. Most of the vehicles on the street are legitimately there servicing local businesses. This is not a 'massive parking problem'

'The application obstructs proper use of the highway in its existing format, and more so in a format meeting ODA regulation, and does not embrace MIS guidelines as directed.'

Firstly the advice referred to are guidelines, not regulations or directions, and need to be interpreted to individual circumstances and the locality. In any case the main thrust of MIS is to encourage the use of streets as real places for people to engage with each other, and to give vehicle movement much less prominence in design. Timberhill is a pedestrian area, and the width of street available for vehicle manoeuvring is more than adequate for the circumstances

Photographs

These appear to demonstrate admirably that pedestrians are well aware that the full width of the street is available for their use. Those photographs showing the movement of large vehicles seem to show that, despite the narrowness of the street the arrangements work quite well. It is inevitably the case that when a large vehicle enters a street such as Timberhill, it will dominate the area. At least one of the

photographs relates to a period when the street was being reconstructed. There would inevitably be more congestion at that time.

Bruce Bentley BSc BTP
Principal Transportation Planner
Tuesday, 03 February 2009

Note for Ian Streeter

Gardeners Arms PH – Timberhill

I have been sent a copy of the further objection to the renewal of the License at The Gardeners Arms, Timberhill, received from David Foskett. I stand by the contents of my previous note (February 2009), but here are a few additional points in relation to the latest correspondence from Mr Foskett.

Guidance

The objection specifically cites two Government publications, namely Manual for Streets (MfS) and Inclusive mobility (IM). As I previously said, both of these documents are guidance, and in a historic environment, where there is a need to cater for movement and to ensure that the street operates as a vibrant place where people want to be (that is, after all, the function of a pedestrianised street in a City Centre). It is, therefore, inappropriate to apply the guidance as inflexible standards that do not take account of the overriding aims of MfS on of which, as I previously mentioned is to *recognise the importance of the community function of streets as spaces for social interaction.*

For reference, and so that there is no ambiguity in what is actually said, I have reproduced here the entire advice contained in IM relating to street widths

3 Footways, Footpaths and Pedestrian Areas

The distinction between a footway and a footpath is that a footway (usually called the pavement) is the part of a highway adjacent to, or contiguous with, the carriageway on which there is a public right of way on foot. A footpath has no contiguous carriageway. Where reference is made to one, it can generally be regarded as applying to the other for design purposes.

3.1 Widths

A clear width of 2000mm allows two wheelchairs to pass one another comfortably. This should be regarded as the minimum under normal circumstances. Where this is not possible because of physical constraints 1500mm could be regarded as the minimum acceptable under most circumstances, giving sufficient space for a wheelchair user and a walker to pass one another. The absolute minimum, where there is an obstacle, should be 1000mm clear space. The maximum length of restricted width should be 6 metres (see also Section 8.3). If there are local restrictions or obstacles causing this sort of reduction in width they should be grouped in a logical and regular pattern to assist visually impaired people. It is also recommended that there should be minimum widths of 3000mm at bus stops and 3500mm to 4500mm by shops though it is recognized that available space will not always be sufficient to achieve these dimensions.

Comments on most recent objections

The recommendation that there should be a 3.5m wide pavement outside shops means that at least 7m is desirable in Timberhill

It is clear from the guidance (reproduced above) that the intention is (where possible) to allow for wheelchairs to pass each other, give adequate access for necessary street furniture, whilst people congregate outside the businesses and within the street. This is because shopping streets are expected to be designed as social spaces, even where there is an adjacent and busy vehicular carriageway and the aim is to ensure that people do not have to step out in front of traffic. There is no evidence of any significant level of pedestrian conflict on Timberhill, and the pedestrian flows are, in any case relatively light. Suggesting that 7m metres width is necessary in these circumstances, and using it as justification for preventing social use of a pedestrianised street is totally contrary to the aims of both this guidance (which is to ensure that disabled people are properly catered for within the built environment), and MfS.

I previously suggested the 2.75m running width is acceptable for fire tender access

This is the advice in manual for streets, which I reproduced just to demonstrate that the much greater width here is significantly wider than the minimum that could be acceptable. I think that is obvious from the context.

Designing everything to a minimum creates potentially hazardous situations.

Timberhill is very far from 'minimum' in any respect. Emergency access is more than adequate, space for pedestrians substantially exceeds the minimum recommended levels, and the street has been carefully redesigned to cater for modern use in an historic context (which it would be inappropriate to change), specifically with the aim of providing an environment where increased social activity is possible.

Issues were not previously addressed

Concern about shared surfaces deterring pedestrians

Timberhill is a pedestrianised street with access allowed solely for the servicing of adjacent businesses. This is typical of pedestrianised streets in the city (although some are time limited), and every time we have undertaken work of this nature, pedestrian flows have increased substantially. The design actively encourages pedestrian activity rather than deterring it

The issue of the gradient was not addressed

Timberhill is on a natural slope, and the gradient is not excessive (and certainly within the limits that would be acceptable for a new highway). Vehicular speeds are low, and so far as I can see this is not an issue

Vehicular swept paths were not considered

These are considered at the design stage and are usually only an issue where very tight turns are necessary. In any case, Timberhill is almost straight at this point.

The area might need to be widened to cater for Disabled Access requirements

The impact of this will have to be considered if it is proposed. It does not affect consideration of the current proposals

Conclusion

I remain of the opinion that there are no transportation reasons why tables and chairs should not be located on Timberhill outside the Gardeners Arms.

Bruce Bentley

Tuesday, 08 February 2011

2. All persons drinking beverages in the area marked on the plan attached to the licence shall be seated.

Members added these conditions to encourage persons to be seated whilst using these facilities and to try and avoid large open areas. However since the grant of that licence, and as indicated in paragraphs 10 and 11 of this report, compliance with these conditions has been found to be problematic and alternative conditions together with an alternative approach to the area proposed to be licensed is suggested by your officers.

Consultation

8. Details of the grant application have been forwarded to the Norfolk Constabulary and Norfolk Fire Service, both of whom have no objections to the proposals. Their responses are attached at Appendix E.

9. Copies of the application were also sent to the City council planning, transportation and environmental-protection sections for comment. The council's Principal Transportation Officer has responded on behalf of planning and transportation and his comments on the current application are shown below. His comments on the previous two applications to renew the existing licence, which were considered by members in February 2009 and 2010, are attached at Appendix F.

Principal Transportation Officer comments:

I've looked at the latest correspondence from Mr Foskett, and so far as I can see, the issues that he has raised in the past relating to his perceived non-compliance with various guidelines in the use of highway space do not feature in his latest objection. In these terms, therefore, the major content of my note (which relates to highway use and design) whilst generally relevant does not answer any of the specific comments that he now makes which seem to me to relate to compliance or otherwise with various licensing conditions.

However, in assessing whether the use of the space outside the Gardeners Arms as proposed is acceptable in highways terms, I would have to say that the addition of a further table within the licensed area is unlikely to have any significant impact, so my original conclusion stands.

10. Environmental protection have responded by advising that they have received numerous complaints from Mr Foskett of Moss and Leakey Opticians, who are also located in Timberhill, opposite the northern end of the proposed licensed area. The complaints relate to alleged breaches of the existing licence conditions, specifically the two additional conditions (reproduced at paragraph 7 of this report) imposed by members in February 2011. The complaints have included stills taken from Moss and Leakey's CCTV footage which are all timed and dated. The full response from environmental protection, together with the CCTV stills, is attached at Appendix G to the report.
11. The response from environmental protection, who are responsible for dealing with licensing complaints and enforcement, has stated that the additional two conditions attached in February this year are neither practical to enforce nor



NORWICH City Council

memorandum

To:	Ian Streeter	Your ref:
From:	Tony Shearman	Our ref:
Date:	5 December 2012	cc:

Subject: Application to renew tables and chairs licence –
Gardeners Arms Timber Hill Norwich

Many thanks for the opportunity to comment on this application.

Since the grant of the current licence this department has received one complaint regarding the operation of the tables and chairs area.

This complaint was raised shortly after the licence was granted and related to the fact that not all the 8 tables and 24 chairs that the licence authorised were being placed out. Upon investigation it was ascertained that at this time the new licence had not been sent out to the licensee, and he was unaware of the newly imposed condition requiring all 8/24 tables/chairs to be placed in the area.

Once this mis-understanding had been pointed out to the licensee this was soon rectified. A number of observations have been undertaken in the meantime to check on compliance with this condition and I have attached the observation log for information.

<\\Sfil3\Shared Folders\Consumer
affairs\Cases\Investigations_Pollution\Licensing\Licensing Enforcement
Correspondence\Tables and Chairs\Gardeners Arms Monitoring Log 2012.doc>

No other complaints have been received from any persons regarding this licence.

With the exception of visiting the premises to provide advice regarding the new licence conditions as detailed above, this department has not had any reason to undertake any enforcement action, either formal or informal, in relation to the current licence.

I have no objections to the granting of the licence as applied for.

Tony Shearman
Environmental protection officer - public protection
Norwich City Council



Monitoring Log 2012

Address: Gardeners Arms PH, Timberhill

Re: Tables and Chairs Licence Conditions (8 tables & 24 chairs)

Date/Time	Comments	Officer
8/2/12 14:00	Attended premises, 8 out of 8 tables put out but only 21 of 24 chairs. Spoke to Philip Cutter and advised he was in breach of current licence conditions. He explained that 3 of the chairs were broken and unsafe to use. He also said that he hadn't realised that they all needed to be put out to comply but now he is aware he will get them replaced ASAP. At the time of my visit the weather was very cold and only a few brave souls were using the area. Even though there were 3 chairs missing the rest of the furniture was evenly spaced with no large gaps and no groups of people standing or causing a nuisance.	TS
20/02/12 :15:00	Area checked all 8 tables and 24 chairs present	MS
23/2/12 17:50	Area checked all 8 tables and 24 chairs present and placed correctly, licensee not seen	TS
24/2/12 10:45	Area checked - all 8 tables and 24 chairs present (three stacked at top end), nobody in area. Licensee not seen	ML
28/12/12 11:45	Area checked - all 8 tables and 24 chairs present, nobody in area. Licensee not seen	ML
01/03/12 12:00	Area checked all 8 tables and 24 chairs present. Two tables occupied	MS
05/03/12 1320	Area checked - all 8 tables and 24 chairs present and placed correctly, nobody in area. Licensee not seen	TS
08/03/12 1005	Area checked - all 8 tables and 24 chairs present and placed correctly, nobody in area. Licensee not seen	TS
08/03/12 1315	Area checked - all 8 tables and 24 chairs present and placed correctly, only one person using area seated at the upper end. Licensee not seen	TS
12/03/2012 16:50	Visit made 24 chairs and 8 tables present, a couple of males stood by the door. It was a sunny Saturday afternoon which meant several tables and chairs were occupied	EC
19/03/2012 16:30	Area checked - all 8 tables and 24 chairs present (one 'odd' wicker chair) and placed correctly, nobody in area.	ML

29/03/2012 13:00	Lovely sunny afternoon all chairs and tables present and correct. Area well used most tables were occupied	EC
30/03/2012 17:00	Visit made 24 chairs and 8 tables present, almost all tables and chairs were occupied	EC,ML,TS,AP
20/04/2012 13:15	Visit made 24 chairs and 8 tables present, five people seated in area	ML
26/04/2012 13:00	Visit made 24 chairs and 8 tables present, two people seated in area	ML
01/05/2012 12:55	Visit made 24 chairs and 8 tables present, 2 or 3 people seated in area	TS
11/05/2012 14:00	All 8 tables and 24 chairs present, most tables occupied.	EC
18/05/2012 12:40	Visit made 24 chairs and 8 tables present, 9 people seated/standing in area	ML
25/05/2012 17:30	All 8 tables and 24 chairs present, area very busy with most chairs taken and approx. 20 persons standing, one or 2 just outside barriers. No rowdy behaviour observed just friendly chatter. Member of Moss and Leakey staff seen locking up premises and leaving for the day.	TS
26/5/2012 12:10	8 tables and 23 chairs mostly occupied, area very busy, lovely sunny weather and a Saturday lunch time	EC
8/6/12 14:20	Visit made 24 chairs and 8 tables present, 1 person standing in area	ML
28/06/2012 12:35	All tables and chairs present no problems	RD
4/7/2012 21:45	Visit made during warm summers evening after the Olympic torch relay so fairly busy, majority of table occupied 24 chairs and 8 tables, well spaced no nuisance present	EC and TS
24/07/2012	Counted twice and believe that one chair (8 tables 23 chairs) was missing the area was v busy but causing no issues to the local area.	RD
25/7/2012 14:10	Visited site. Approx 7 people in area (in and out of PH). Beer deliveries taking place so one chair outside barrier area to side of delivery hatch. One lady had pulled a chair across from another table to place her legs on. 8 tables and 23 chairs.	ML
28/9/2012 11:45	Visit made, 24 chairs and 8 tables present, 4 people seated in area	ML
17/10/2012 18:15	Visit made, 8 tables and 23 chairs present, no persons using outside area either seated or standing.	TS
23/10/2012 14:10	Visit made, 8 tables and 23 chairs present, no persons using outside area either seated or standing	TS
26/10/2012 16:45	Visit made, 24 chairs and 8 tables present, 3 people standing/seated in area	ML

Superior Optics

A REFLECTION OF THE WORLD THROUGH GLASS LENSES

Moss

A
Leakey

APPENDIX G
PRIVATELY OWNED & INDEPENDENT SINCE 1971

Designer Eyewear

Organisational Development
06 NOV 2012
Post Room

Attn: Ian Streeter
Licensing Officer
Norwich City Council
City Hall
Norwich
NR2 1NH

RECEIVED
- 6 NOV 2012
LICENSING OFFICE

5th November 2012

For attention: Regulatory Committee

BY HAND

Re. Renewal Application for a Tables & Chairs Licence: The Gardeners Arms

The writers are Mr David Foskett and Dr Nadarajah Sasitharan, the directors trading as Moss & Leakey Opticians ("M&L") at 1 Timberhill Norwich.

We strongly object to grant of the tables and chairs application, in whole.

Our principal grounds of objection are:

1. Nuisance and adverse impact on the amenity, character and vitality of the surrounds;
2. Continuing (and historic) breach of licence conditions;
3. Obstruction to movement and unsuitability of site space (including the application area and surrounds) and function.

We would refer the Regulatory Committee again to the voluminous archive of evidence, correspondence and record logs supporting our objection submitted to committee since the first hearing of 13th May 2008 (post smoking ban).

We draw to the Regulatory Committee's attention in the first instance:

Licensing letter of 4th March 2011

We acknowledge the below explanatory comments:

- It is accepted that the purpose of a Section 115E Licence is for the use of facilities, in this case the placing of tables and chairs;
- Outdoor drinking in the public highway whilst standing is not an appropriate use of the facility whatever the degree of public disturbance;

Environmental Protection letter (recommendations to Committee) of 3rd October 2011

We are of the view that in giving guidance to Committee NCC had failed first to adequately investigate any complaint of nuisance made by M&L or others in a three year period prior to the report. That officers had failed to contact those complainants directly or to seek to corroborate incontrovertible evidence of that nuisance held by those complainants in that three year period. That NCC had failed to make the report on fact based evidence and instead expressed a personal opinion

Partners: Dr N Sasitharan & Dr David Foskett

Lead Officer

without explanation. That the inadequate investigation, the failure to assess and summarise complaints of nuisance, the failure to report that nuisance factually to Committee and the unsubstantiated comments such as, "... that no evidence has been produced of any significant nuisance caused ...", represented a gross misrepresentation of the whole evidence package amounting effectively to the denial of that vivid evidence of nuisance for Committee to consider.

The report throughout referred only to alleged breaches of condition when at the hearing these were in their entirety accepted as actual in terms by the licensee. That breaches were termed 'technical' in the report without definition or explanation of that term, and that the number and severity of breaches went unreported to Committee, in our view displayed a patent bias and favour toward the Applicant.

That the report in declaring only in broad terms that it was "clear" that conditions attaching to the licence were neither practical to enforce nor proportionate, when that declaration was made without reasoned explanation, sat uncomfortably against the level of supporting evidence required of the objector.

That the report in proposing to Committee that the introduction of an extra table and three chairs alone would be sufficient to negate the need for further conditioning to ensure the control of large standing areas was misleading. The report stated "... he (the licensee) fully understands that the area should not be used to allow a large area for customers to stand." but immediately following the decision an area of approximately twenty five percent of site was cleared of furniture and remained unenforced until M&L wrote in complaint two and a half months later.

Report to Regulatory Committee: 21st November 2011

We are of the view that the report did not satisfactorily record the considerable breadth of the problems arising from the grant of the licence. Matters not dealt with in the report include:

- there was no acknowledgement of the application site's acute proximity to M&L nor did it provide comparison distances to other traders premises in the street
- there was no guidance advice on the rapid fall away of noise nuisance to other businesses removed by distance from the site, this being a square of the distance, when even at just twice the distance only one quarter or twenty five percent of the noise disturbing M&L would be evidenced
- there was a failure to explain the inconsistency between the policy declaration that 'outdoor drinking in the public highway whilst standing is not an appropriate use of the facility whatever the degree of public disturbance' and the diametrically opposite recommendation to remove the condition to be seated whilst drinking
- there was no explanation of the recommendation to make entrances completely unconditioned and allowing vertical drinking unless challenged by Police

DETAILED OBJECTION

OBJECTION 1: Nuisance and adverse impact on amenity and the character and vitality of the area:

The persistent nuisance and annoyance from the application area is real and remains the primary reason for making this objection.

With the removal of the five 'protector' conditions at last years hearing we have inevitably had the consequential return of nuisance which earlier Committees had sought to control by imposing those same conditions. We are back to square one and a site with large standing areas, particularly around the doorways, that are occupied once again by the same large groups of vertical drinkers which we had previously convinced Committee were largely the cause of that nuisance.

It seems unfair that in making our objection we should have to repeatedly explain that large groups can create unruly behaviour and noise nuisance or that vertical drinking encourages unruly behaviour and noise nuisance. We have brought substantial evidence to Committee of that nuisance arising from those circumstances and that should be conceded without further examination of this point. We also feel that NCC should be providing guidance to Committee in these matters using study evidence rather than absenting itself from these deliberations.

The 'unnoticed' loss of the two part condition 16 requiring 'the control of noisy customers' and 'that customers be stopped from standing in the middle of the street outside the site (or leaning on our windows)' has left us without any avenue now even to complain to NCC over nuisance. There were no grounds given for the recommendation to remove this condition by NCC and it is nonsensical that this very reasonable control is not already a Standard Condition applying as a matter of course to every licence with the potential for nuisance.

We seek the reinstatement of this most vital protector condition as whilst its removal might be appealing to NCC, so they do not have to deal with any breach/complaint, we have been left with no option but to call the Police instead and it cannot be right that they should be bothered with having to try control low priority nuisance when those granting the licence have asked Committee to remove conditions that would do this if they were properly enforced.

Indeed we find it inexplicable why Committee would have removed any of those conditions 16 (two part), 17 (two part) & 18 other than to relieve NCC of having to deal with breaches of those conditions. That it is somewhat difficult for the licensee to impose those conditions is acknowledged but there will be many conditions relating to his general licence that are equally difficult or harder to manage but they too are there in that licence to control unruly behaviour and nuisance.

In part we suspect the decision to remove control conditions is because those supporting witnesses giving evidence in 2011 said they were not bothered like us by noise nuisance which led to the impression that our complaints were therefore exaggerated or unfounded. But noise nuisance is just five metres from our premises door and the nearest trader giving evidence in 2011 (London Camera Exchange) was at least twenty five metres from that same door and would have witnessed only one twenty-fifth or just four percent of the nuisance invading our shop.

In those circumstances, and with such vastly differing experiences of nuisance, it is hardly surprising other Timberhill traders would have a different viewpoint. However, the Report for Resolution/ Background/ 3., requires that 'due weight be given to relevant considerations' and Committee members were unable to weight that evidence properly without the 'tools' to do this in the form of some technical guidance from NCC.

We ask that the 'reciprocal of the square' rule describing noise distribution within the street be confirmed by NCC at this 2012 hearing and that this earlier evidence is then reviewed.

Since Helen Orrick (the other objector and immediate neighbour of the application site) ceased trading, and since her echoed complaint unsurprisingly mirroring ours ended with that cessation, NCC

have allowed the characterisation of M&L as lone troublemakers rather than victims of serious nuisance.

Failing to acknowledge, assess and report on our substantial documented evidence, supported by the witness evidence of Cllr Holmes, has hidden the consistency and extent of that weight of evidence of nuisance from Committee. For four years NCC have failed ever to investigate, corroborate, collate and report that evidence at this hearing and in our view to foster the impression that there is little evidence of nuisance when they prefer instead to marginalise M&L for their own purposes. The reality is that they have avoided confronting that evidence as they would then have to concede the awful extent of it and that it continues to blight our occupation of this neighbouring premises.

As soon as the protector conditions were removed M&L were advised by Ivan Brown the very next morning after the hearing that he would be removing furniture from parts of the site to create large standing areas in front of his public house which made a mockery of NCCs misleading recommendation that the extra furniture alone would remedy this problem.

In actual fact the placement condition needed reinforcement so that quantities and pattern were observed if Committee were to ever stop the licensee from the self-evident abuse of the Highways Act Section 115E that the facility must be used as intended with customers sitting at the furniture.

We have brought expert Counsel to these hearings to emphasise the requirement for compliance and yet we are back to having an unruly smoking area and outside bar for vertical drinkers that the statute does not allow and ironically that even Environmental Protection can no longer enforce because of those conditions being removed.

The overwhelming, almost daily, adverse impact of the licence on our lives remains. As the harsh economic climate and changing shopping patterns threaten the very existence of the High Street we also have to endure the intimidating atmosphere created by the licensed area which disallows ordinary window shopping from which any viable business is dependent. Footfall which would otherwise browse our shop window is understandably discouraged by the incessant noise, shouting, wolf-whistling, cat-calling and swearing from the site.

OBJECTION 2: Continuing (and historic) breach of licence conditions

The Nov 2011 Report for Resolution/ Consultation/ 10. incorrectly referred to M&L complaints being only in relation to "... specifically the two (new) conditions ..." and misrepresented the extent of the licensee's incessant flouting of all 'protector' conditions and seemingly at will. Our objection then detailed evidence of the breach of eight conditions and/or part conditions and these were eventually acknowledged by the licensee in the same manner as at the Feb 2011 hearing. It remains a source of much distress that either NCC or Committee would view this level and frequency of breach as acceptable and not requiring action with censure of the licensee.

In our view it is also unfathomable that NCC purports to have a policy discouraging vertical drinking in the public highway within the city bounds, but when confronted with a licensee who is proactively bringing this about, then recommends that Committee turn a blind eye to it

We can now add to the list of breaches the failure of the licensee to even meet with the new grant at Nov 2011 when he maintained only seven sets of furniture being placed, instead of the eight sets applied for and granted, to cynically maximise the large standing areas for large groups and vertical drinkers within the site. We wrote at 31st January to Mr Massey (APPENDIX A),

“By 16th December (just 25 days from decision) we monitored the following;

1/ only 7 tables and 21 chairs placed, the conditioned numbers are 8 and 24 respectively and,
2/ tables and chairs being bunched within the site to allow more standing areas and,
3/ a single area amounting to 25% of the whole licensed area from the right edge of the main door and approximately 5.0 metres in length is absent of any furniture at all increasing to 7.0 metres length of open standing area when the doorway is included (and running the full length of our premises frontage)

We attach images of furniture positions, as factual evidence rather than make unsupported allegation, but this arrangement is there all day every day for any council officer to view themselves if minded.

The arrangement of furniture has been and remains now consistently in this pattern since 16th December (monitored daily) in contravention of the licence conditions and Highways Act Section 115E ‘use of space’. The Licensees history of non-compliance and manipulation of furniture positioning recorded over four years continues unabated despite ‘assurances’ to Committee by NCC officers otherwise.

Nuisance plaguing our business since the smoking ban of 2007 has increased again since the ‘seated whilst drinking’ condition has been lifted ... Yesterday, 30th January, from around 4:00pm a scene much reminiscent of the old fashioned standing terraces at football matches developed between a man standing in the street and vertical drinkers standing in the furniture free area verbally abusing each other. We were nuisanced by much foul language and the intimidating atmosphere developing in the street until at 4:25pm a full blown fist fight erupted. In the fight five men came crashing violently against the windows of our practice ...”

OBJECTION 3: Obstruction to movement, unsuitability of site space (including the application area and surrounds) and function

• Obstruction to pedestrian and vehicular flow

We rely on our submission of 17th November 2008, its narrative, diagrams and images which all remain abundantly relevant in making our objection.

• Unsuitability of site space and function

We rely on our submission of 5th October 2011, its detailed argument, its substantial and unarguable evidence of various breaches of the licence and instances of disturbance being indicative of the structural problems arising from the impracticality of the spacing. Since the smoking ban of 2007 the space doesn’t work, the applicant cannot make it work and it remains a source of constant nuisance to its immediate neighbours.

Our conclusion

We acknowledge that Committee has to be guided by NCC advice but we earnestly consider that advice to be seriously flawed for all the reasons set out above and not least because its recommendations have been found out to be ill-conceived and hollow during this latest term of the licence.

The licensee has shown no will at any time to abide by Committees controls placed on the licence, even these less strenuous ones, and NCC officers have shown no appetite to police or enforce those controls either. But removal of those controls must be justified and not simply made for the purpose of denying justifiable complaints however bothersome to the Authority.

The consequences of last years decision are;

- 1/ that large standing areas have arisen again
- 2/ that large unruly groups can form again
- 3/ that vertical drinking is endemic again
- 4/ that the street is populated by the PHs customers again
- 5/ that increased noise and nuisance is prevalent again

and by any measure the intention of Committee to enforce the licence by other means has failed.

The cosy picture that families pull chairs together and leave these standing spaces might be appealing but the unarguable reality, as evidenced again this year, is that the licensee uses his 'no fixed pattern' allowance to manipulate the furniture numbers and positions to maximise the occupation of his site and with any customers he can garner. On a sunny weekday the site may well be filled with nice well-mannered families but that is infrequent when it is generally occupied otherwise by standing smokers and vertical drinkers. On match days, other sporting days, party nights and stag weekends the customers are anything but well-mannered and whilst controls are not required for the former customer they remain essential for our protection against the latter.

We acknowledge the Authorities policy to promote a vibrant city centre with a café culture but that must not come at the expense of other traders interests when these should be the overriding consideration. And nor should the complaints of traders just be viewed as a 'nuisance factor' denying its officers a quiet life when that in turn denies us the peaceful enjoyment of our property. It is our reasonable expectation that we be protected from the licence, and to complain when it is justified if we are not, but complaints have never been properly investigated or recorded and have never been appraised and reported to this Committee.

At the previous hearing we were guided by expert Counsel whose opinion was that we must respect the earnest request made by the Feb 2011 Committee that we bring significant time dated evidence of nuisance and significant time dated evidence of breaches of control conditions to the Nov 2011 hearing.

It was his opinion that the sheer weight of contemporaneous evidence, together with the previously recorded and acknowledged historical and persistent breaching of conditions, was overwhelming. And, in view of the cautioning of the licensee by Committee that his previous conduct would not be tolerated, would be viewed as untenable by Committee.

The consequence of that focus on the licensees noncompliance was that Counsel saw no value in arguing against NCCs nonsensical recommendation to remove controls nor did he argue that those controls needed strengthening when in his opinion the application would be thrown out. It is undeniable that the decision to return us to an unfavourable position came as a major shock, but in consequence, all of our concerns expressed over many hearings have again been realised this year and we are once again blighted by inconsiderate nuisance.

Inadvertently Committee has also reverted the position such that it has effectively given permission to obstruct the highway for the purposes of creating a smoking area for customers to stand in and an outside bar area for vertical drinkers to stand in, neither of which it is entitled to do under the Highways Act Section 115E.

We continue to object to the grant of this licence in whole but should Committee feel disinclined to reject the application outright we would ask that it considers the following controls and amendment;

- 1/ return of permission to a 'summer licence' only (as pre 2007 smoking ban)
- 2/ that the furniture be removed from the highway on other inclement days
- 3/ that the lower end of the site directly opposite and facing M&L premises be refused permission
- 4/ reinstatement of the 'drinking only while seated' condition or,
- 5/ that vertical drinking be permissible only in a limited area of the site and away from M&L premises
- 6/ reinstatement of the 'even furniture spread' condition
- 7/ that furniture be maintained in a defined pattern (with markers on the PH fabric) to stop movement
- 8/ that areas in front of doorways be controlled as with the whole licensed area
- 9/ reinstatement of the 'control of noise' condition
- 10/ reinstatement of the 'no customers to spill into the street' condition

we will at the hearing voice our reasoned explanations why we make these requests.

Finally, for all these reasons we urge that this application be refused.

Yours sincerely,

David Foskett, Managing Director

Dr. Nadarajah Sasitharan, Clinical Director

to NCCs failure to police and enforce the licence conditions or carry out any effective investigation of licence breaches. With respect the foregoing provides no evidence that our complaints have even now been taken seriously when patently there is once again a total absence of any monitoring or follow-up action leaving us unprotected from the licence.

Please acknowledge our correspondence by return and indicate a deadline to advise as to action NCC will be taking to protect our business interests, premises and staff going forward.

Yours sincerely

David Foskett
Managing Director
Moss & Leakey Limited

PS please note our change of legal entity coming about at 1st January 2012

Attachments Preview:

[Upload all photos to Facebook](#)

IMG_1283.JPG (Resized to 20%, [Show actual size](#))

[Email this photo](#) | [Upload photo to Facebook](#)



IMG_1284.JPG (Resized to 20%, [Show actual size](#))

[Email this photo](#) | [Upload photo to Facebook](#)

APPENDIX 'A'



Norwich Mobile Ophthalmic Ltd

Registered Office:
44-48 Magdalen Street, Norwich
NR3 1JU

Ian Streeter
Licensing Officer
City Hall
Norwich



31st October 2012

Dr Sirs

Gardeners Arms Tables and Chairs Licence

I am a self-employed optometrist providing community optometric services including pre and post operative cataract assessment at St Stephens Gate Medical Centre and Spire Hospital. My work takes me to several independent practices throughout Norwich and Norfolk one of which is Moss and Leakey Opticians on Timberhill.

I would like to voice my concern with regard to the levels of noise and general disturbance caused to both me and my patients by the customers of the public house opposite.

The consulting room at Moss & Leakey Opticians is on the first floor at the rear of the building and the noise is extremely distracting for me and the patient during my clinical eye examination when they are naturally very tense. I have noticed that the noise outside in the waiting area on the first floor at the front of the building is even worse than it is on the ground floor dispensing area and in summer with the windows open for ventilation it can be like sitting the patient down in the midst of some "wild party" going off around them. Working in the consulting room is particularly intolerable on a Saturday when people in the "fenced off area" of the pub are often shouting and swearing at the tops of their voices and can be clearly heard in the room as well as the waiting area.

Practicing in optometry unfortunately involves finding people with life and sight threatening illnesses. Only a few weeks ago I had to tell a parent of a very young child that I had found a life threatening brain tumour and routinely I may have to tell a patient they have glaucoma or age related macular degeneration or a whole host of other conditions threatening the health of their eyes.

Having to tell a patient or parent is difficult enough without having to do that with the distraction of this background noise when the patient is struggling to hear let alone understand what it is I am telling them. I can only say that I am used to quiet environments elsewhere where I practice and the problems at Moss & Leakey Opticians are hardly understandable.

I will be unable to attend any formal hearing, which I understand will take place to decide on the licence, but I remain available for interview outside my practice hours if any officer wishes to take a further statement from me. I hope anyway that my evidence is found useful for whom ever it may concern.

Yours sincerely

Kevin Hardbottle BOptom, BSc (Hons)

cc Dr Sasitharan, Moss & Leahey Opticians

Annex 1 – Mandatory conditions

- 1 No supply of alcohol may be made under a premises licence -
 - (a) at a time when there is no designated premises supervisor in respect of the premises licence, or
 - (b) at a time when the designated premises supervisor does not hold a personal licence or his personal licence is suspended.
- 2 Every supply of alcohol under the premises licence must be made or authorised by a person who holds a personal licence.

Annex 2 – Conditions consistent with the Operating Schedule

- 1 **General - all four licensing objectives**
- 2 1. Existing procedures will be applied to the premises in relation to the additional hours requested.
- 3 **The Prevention of Crime and Disorder**
- 4 1. The Licensee will operate in strict compliance of the law in respect of the operation of the premises and maintain good standards of behaviour by his customers.
2. If required to do so by Police he will operate a Text/Radio Pager with local Police.
3. Door supervisors, who must be SIA registered, will be utilised when required.
4. The Portman proof of age scheme will be in operation on the premises.
5. Regular glass collections will take place.
6. The licensee will advertise, sell and promote the sale of alcohol responsibly, and in such a way that it will not intentionally, or is likely to, encourage the excessive consumption of alcohol.
- 5 **Public Safety**
- 6 1. The Licensee will undertake ongoing risk assessments in order to comply with Health and safety and Fire Prevention legislation.
- 7 **The Prevention of Public Nuisance**
- 8 1. The Licensee will undertake a risk assessment to ensure that proper measures are taken to avoid any public nuisance.
2. The Licensee will ensure that notices will be displayed at all exits requesting the Public to leave the premises and area quietly and to place litter in the receptacles provided..
3.
- 9 **The Protection of Children From Harm**
- 10 1) Children are allowed in the cafe bar area of the premises for the purpose of eating, and must be accompanied by an adult.
2) All children are expected to be off the premises by 18:00. Relevant signage will be affixed in relation to admittance of children.
3) Any 16/17 years employed at the premises will be risk assessed to assess their suitability for the role.

Annex 3 – Conditions attached after a hearing by the licensing authority

1. The Licensee will ensure sufficiently appropriately trained staff working to be able to monitor customers coming in and their actions and behaviour inside and also to be available to manage departure of customers (In addition to those needed to serve alcohol and general running of the business etc)
2. 'No ID-No Entry' policy for those persons that appear to be under 21 at times when door supervisors are in operation.
3. Security Industry Authority (SIA) trained door supervisors will be on duty on Friday and Saturday evenings with ability to screen customers coming in, manage behaviour inside and prevent incidents and drunkenness, and to manage dispersal by marshalling, standing at the door as people leave.
4. The Designated Premises Supervisor (DPS) will become a member of Norwich Pubwatch and Norwich Licensing Forum. The DPS or appropriate representative to attend minimum of 3 meetings of each group per year.
5. An adequate CCTV system will be installed and operated covering inside the premises and the entry and exit points.
6. The outside seating area will close at 2330hrs with tables and chairs securely removed.
7. The outside seating area will be cleared of empty glasses at 15 minute intervals.