

# NORWICH CITY COUNCIL

## Report for Resolution

Report To Regulatory sub-committee

21 November 2011

4

Report of Head of citywide services

Subject Highways Act 1980: Application for the grant 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.

### **Recommendations**

1. That members determine 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.
2. If members are minded to approve the application then officers recommend that:
  - the entrances to the application premises shall not be included within the area licensed for tables and chairs;
  - the licence be 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.

### **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

Phone No  
212439

### **Background Documents:**

Report and minutes Regulatory sub-committee: 13 May 2008; 17 February 2009 &

## **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.
2. The Act also provides for a council to attach such conditions as they think fit to a permission granted under Section 115E. The council has adopted standard conditions in respect of permissions to use objects or structures on the highway and these are attached at Appendix A of the report. Although this application is for the grant of a licence, a copy of the conditions attached to an existing licence issued to The Gardeners Arms under The Act is shown at Appendix B to the report. The existing licence has one table and three chairs less than the proposed grant application.
3. 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. Accordingly, the adopted standard conditions could be added to or amended depending on the circumstances of each individual application.

## **The Application**

4. An application for the grant of a licence to place eight tables and twenty four 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, a location plan and accompanying photographs are attached at Appendix C to the report.
5. The requested days and times of use are Monday to Sunday between the hours of 08:00 and 23:30.

## **Existing licence**

6. A licence granting permission to place seven tables and twenty one chairs outside the Gardeners Arms was first granted in September 1996. There is currently an existing licence in force which is due to expire on 11 November 2011. 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. A copy of the minutes of the most recent meeting is attached at Appendix D to the report.
7. Members will note from the minutes at Appendix D that the most recent renewal application in respect of the existing licence was approved subject to the standard conditions and two additional conditions, namely:
  1. 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 as evenly in the area marked on the plan attached to the licence as can be managed other than is

necessary to allow unimpeded access to doorways; and

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 proportionate to the problems being caused by their non-compliance. He mentions that the vast majority of the CCTV pictures fall outside of the opening hours of Moss and Leahey and although he accepts that the photographs show technical breaches of the conditions, in his opinion there is no evidence to indicate that any nuisance is being caused as a result of this.

12. Occupiers of nearby premises have also been notified of the application and this has resulted in one objection (from Moss and Leahey Opticians referred to in paragraph 10 above). The response objecting to the application is attached at Appendix H and objects on the basis of nuisance and adverse impact on the amenity, character and vitality of the surrounding area; continuing and historic breaches of licensing conditions; and obstruction to movement and unsuitability of the site space and function. In addition to the written details contained at Appendix H the objector has provided a large number of photographs taken from CCTV footage which have been submitted to the council since the previous decision in February 2011 and these are attached at Appendix I.
13. Twelve letters of support have been received in respect of the application and these are attached at Appendix J.

### **Licensing Act 2003**

14. 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 07:00 – 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 K.
15. 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
16. The council has not received an application to review the premises licence held in respect of the Gardeners Arms.
17. As previous additional conditions have found to be problematic your officers recommend that should members choose to grant the application the areas in front of doorways shall not be included. Should any drinking occur in these areas this would be a matter for the Norfolk Constabulary to enforce but to ensure safe access and egress no obstructions should be placed in these areas. By reducing the area that may be licensed, and with the additional table and three chairs, the possibility of open spaces within the licensed area is lessened.