

LICENSING PANEL

(Non Licensing Act 2003 Functions)

Agenda Item 82

Brighton & Hove City Council

Subject: *Application for a Highway Permission (Highways Act 1980) on behalf of Jimyings Grocery, 44a George Street, Brighton*

Date of Meeting: *27 October 2009*

Report of: *Director of Environment*

Contact Officer: Name: **Ian Denyer** Tel: **29-2065**
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Wards Affected: Queens Park

FOR GENERAL RELEASE

1. SUMMARY AND POLICY CONTEXT:

- 1.1 This report submits an application for a licence under Part VIIA of the Highways Act 1980 (amended) for determination by the Panel. Under normal circumstances such applications are determined by officers acting under delegated powers. In this case highway licensing policy prevents officers from approving this licence application. However, in such circumstances highway policy grants a right of appeal and officers believe sufficient evidence is available to support an argument for the setting aside of policy restrictions and the granting of the application. The presentation of this application is intended to allow the Panel to consider this evidence so as to determine whether or not to grant officers authority to issue a licence for this site.

2. RECOMMENDATIONS:

- 2.1 That the application be determined.

3. REPRESENTATIONS:

- 3.1 An application for permission to place an advertising board upon the public highway and Appeal has been received from Mr. James Zhu of Jimyings Grocery, 44a George Street, Brighton (see Appendix).

4. RELEVANT BACKGROUND/CHRONOLOGY OF KEY EVENTS:

- 4.1 **Highways Act 1980:**
Section 130 of the Highways Act 1980 imposes a duty on highway authorities to assert and protect the rights of the public to the use and enjoyment of the highway. This duty will include a duty to prevent, as far as possible, the obstruction of highways. However, the council is also permitted to licence objects upon the public highway. Part VIIA of the Highways Act 1980 (sections 115A – 115K) allows highway authorities to carry out works

or place objects on the highway, or permit others to do so, for purposes of enhancing the amenity of the highway and its immediate surroundings, or of providing a service for the benefit of the public or a section of the public. Under section 115E the Council is empowered to grant licences for, inter alia, the placing of objects or structures on the highway provided, in certain cases, that the consent of the relevant frontagers has been obtained. Licences to allow the placing of A –boards are granted under this section.

4.2 Local Policy:

- 4.2.1 Committee decision: Licensing Committee (Non Licensing Act 2003 Functions) 24 April 2009, Agenda Item 33/2.3 states: *“That, except in the case of items within large, waiter-serviced sitting-out areas, no traders’ item shall be permitted to be placed more than five metres from the licensed premises. All objects must be within sight from a window or door of said premises or in clear visual range of cctv camera(s) monitored from within the licensed premises. This provision will mainly affect advertising boards”.*

The above would normally prevent the issue of a licence for this site, since the proposed position is more than five metres from the premises and out of sight of it.

- 4.2.2 Committee decision: Licensing Committee (Non Licensing Act 2003 Functions) 24 April 2009, Agenda Item 33. Resolution 33.32 item 5a. provides that *“Special consideration will be given to those premises situated in twittens and alleyways regarding this policy”.*

George Street is neither an alleyway nor a twitten.

- 4.2.3 However, Committee decision : Licensing Committee (Non Licensing Act 2003 Functions) 24 April 2009, Agenda Item 33/2.4 states: *“That where an application is refused by officers, an applicant may appeal to the Licensing Sub-Committee (The Licensing Panel)”*, hence this appeal.

4.3 Site History:

In past years, another shop (the business nearest to and overlooking the board) has been prepared to accept legal responsibility for monitoring it. This business is not now prepared to become the licensee for this board.

The Applicant has held a licence for an advertising board in the position applied for since 2004. In that time no significant incidents or complaints of breaches of legislation have been reported or discovered.

5. CONSIDERATIONS:

- 5.1 The council is permitted to licence objects upon the public highway under the terms of the Highways Act 1980 and has a duty to consider fairly all applications made under this Act. The applicant has appealed officers’ refusal of a licence and his grounds of appeal are set out in section B of the attached Appendix.

Details of the proposed location of the A- board are set out in section A of the Appendix.

- 5.2 Although George Street is neither an alleyway nor a twitten, the road in which the applicant's shop stands is not subject to the same levels of pedestrian and other traffic as nearby St. James Street (see Appendix – section A) Premises in such a street might therefore be considered to be at disadvantage when compared with premises located in busier streets. Members may wish to consider whether or not special consideration should be given to the application in view of the premise's location in George Street notwithstanding that George Street is neither a twitten nor an alleyway.
- 5.3 Officers believe that the position of the proposed (and past) location of the applicant's board would cause no more of an obstruction to users of the highway than nearby council-placed items: i.e. the communal bin (Cityclean), the tree (Cityparks), the bollard (Sustainable Transport). Please see images in section A of Appendix.
- 5.4 Although officer opinion is that the proposed position does not provide a significant obstruction or danger to highway users it is not clear how the board would be monitored so as to prevent it being moved into the road or onto the adjacent tactile paving.
- 5.5 Any decision of the Panel may, in the future, be taken into account by officers when considering applications for locations and circumstances of a similar nature.

6. CONSULTATION:

- 6.1 A notice was published in accordance with section 115(G) of the Highways Act 1980. No representations in response to the notice have been received. Likewise, no refusal of frontager consent has been received.

7. FINANCIAL AND OTHER IMPLICATIONS:

7.1 Financial Implications:

Revenue

In 2008-9 the council received £13.5k in income from advertising boards. There are no significant financial implications associated with this report.

Capital

There are no known capital implications.

Finance Officer Consulted: Karen Brookshaw Date: 13/08/09

7.2 Legal Implications:

The statutory background to the report is set out in paragraph 4.1 of the report. It is not considered that any adverse human rights implications arise from the report.

Legal Officer Consulted: Hilary Woodward Date: 22/07/09

7.3 Equalities Implications:

There are no significant equalities implications.

7.4 Sustainability Implications:

There are no significant implications.

7.5 Crime and Disorder Implications:

There are no significant implications.

7.6 Risk and Opportunity Management Implications:

There are no significant implications.

7.7 Corporate/City Wide Implications:

There are no significant implications.

SUPPORTING DOCUMENTATION

Documents in Members' Room:

1. N/A.

Background Documents:

1. N/A.