



**Brighton & Hove
City Council**

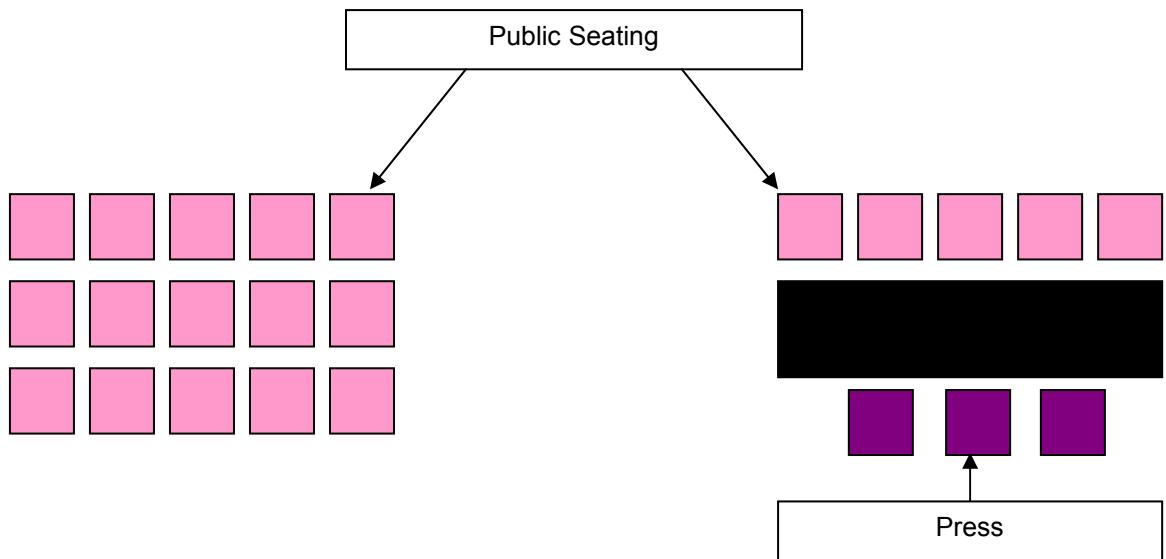
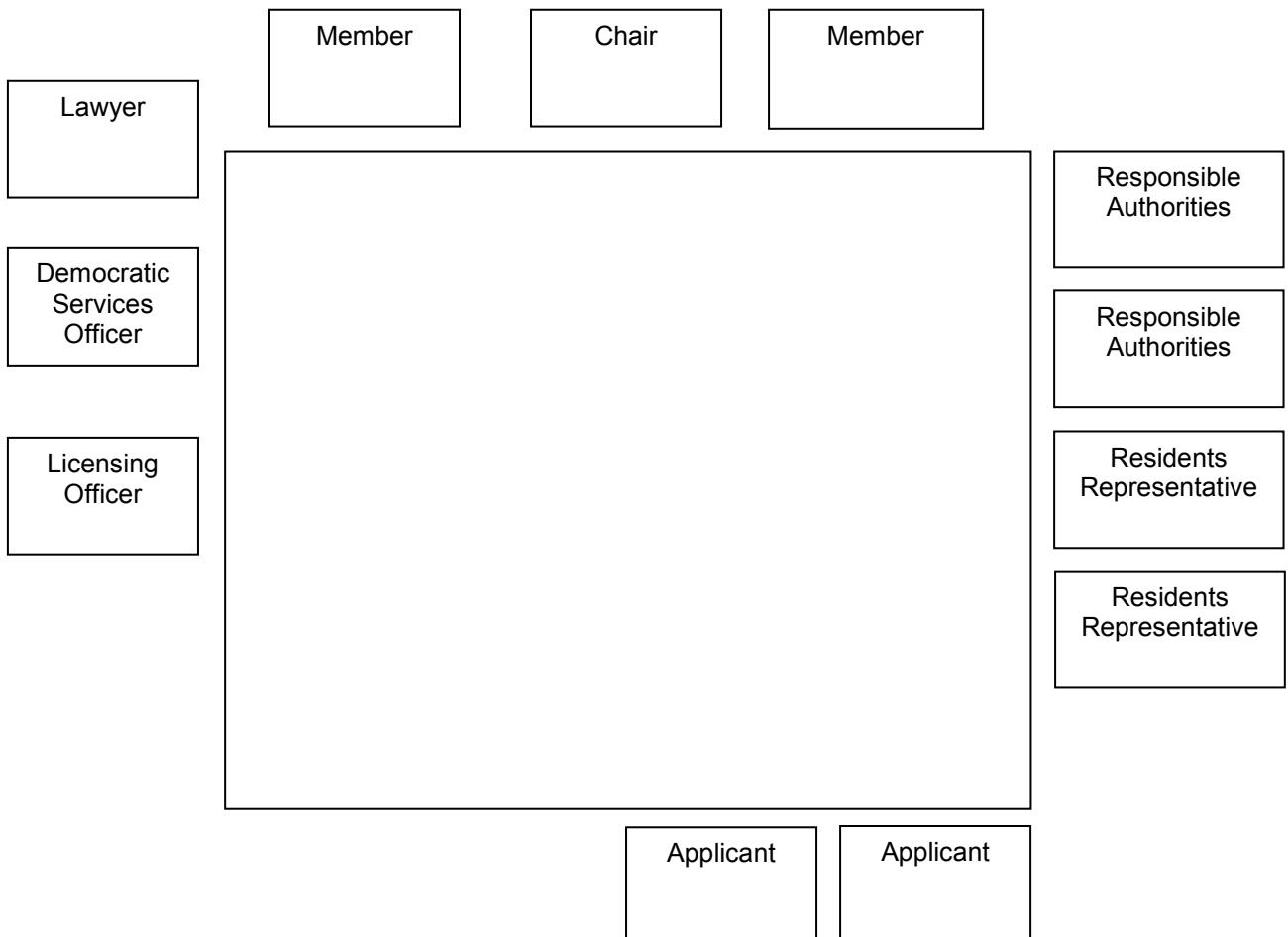
Licensing Panel

(Non Licensing Act 2003 Functions)

Title:	Licensing Panel (Non Licensing Act 2003 Functions)
Date:	20 July 2012
Time:	10.00am
Venue	Committee Room 1, Brighton Town Hall
Members:	Councillors: Duncan, Hawtree and Simson
Contact:	Penny Jennings Democratic Services Officer 01273-291065 Penny.jennings@brighton-hove.gov.uk

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Democratic Services: Meeting Layout



AGENDA

Part One **Page**

1. TO APPOINT A CHAIR FOR THE MEETING

2. PROCEDURAL BUSINESS

- (a) Declaration of Substitutes - Where Councillors are unable to attend a meeting, a substitute Member from the main Licensing Committee may attend, speak and vote in their place for that meeting.
- (b) Declarations of Interest by all Members present of any personal interests in matters on the agenda, the nature of any interest and whether the Members regard the interest as prejudicial under the terms of the Code of Conduct.
- (c) Exclusion of Press and Public - To consider whether, in view of the nature of the business to be transacted, or the nature of the proceedings, the press and public should be excluded from the meeting when any of the following items are under consideration.

NOTE: Any item appearing in Part 2 of the Agenda states in its heading either that it is confidential or the category under which the information disclosed in the report is exempt from disclosure and therefore not available to the public.

A list and description of the categories of exempt information is available for public inspection at Brighton and Hove Town Halls.

3. APPEAL AGAINST REFUSAL OF AN A BOARD LICENCE

1 - 14

Report of Head of City Infrastructure (copy attached)

Contact Officer: *David Fisher* Tel: 292065
Ward Affected: *St Peter's & North Laine*

NOTE: There may be more than one item on this agenda, and as such the item you are interested in may not be heard until later in the day. However, the Chairman reserves the right to alter the running order of the agenda at the start of the meeting without prior notice.

LICENSING PANEL (NON LICENSING ACT 2003 FUNCTIONS)

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Meeting papers can be provided, on request, in large print, in Braille, on audio tape or on disc, or translated into any other language as requested.

For further details and general enquiries about this meeting contact Penny Jennings, (, email) or email democratic.services@brighton-hove.gov.uk

Date of Publication - Thursday, 12 July 2012

Subject:	<i>Appeal against refusal of A board licence.</i>
Date of Meeting:	
Report of:	<i>Gillian Marston, Head of City Infrastructure</i>
Contact Officer: Name:	David Fisher
	Tel: 29-2065
E-mail:	David.fisher@brighton-hove.gov.uk
Wards Affected:	St Peters and North Laine

FOR GENERAL RELEASE

1. SUMMARY AND POLICY CONTEXT:

- 1.1 This report is in response to an appeal from Alan Fitchett of North Laine Market 5a Upper Gardner Street.
- 1.2 The appeal relates to the refusal of a highway licence to place more than one Advertising board on the public highway more than 5 metres from the premises. This is in direct conflict with the highway licensing policy and the principles of managing street access for all users.

2. RECOMMENDATIONS:

That the committee determines the appeal.

3. RELEVANT BACKGROUND INFORMATION/CHRONOLOGY OF KEY EVENTS:

- 3.1 Pre April 2009, the licensing scheme allowed up to two Advertising boards to be placed away from the businesses to which they belonged. This resulted in a large number of boards left unmonitored and chained to street furniture. It also led to clusters of boards appearing at busy junctions. After consultation with businesses, disabled groups and residents a number of changes were suggested to the highway licensing policy.
- 3.2 On 24th April 2009, Licensing Committee agreed several changes to the highway licensing policy including "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 5 meters 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 restricting advertising boards to within 5m of the premises." Licensing Committee also recommended that the policy be reviewed by overview and scrutiny committee.
- 3.2.1 That applications for A-Boards shall be restricted to 1 per premises.
- 3.3 The report was the result of a review incorporating extensive consultation, research and officer experience of managing highway licensing of traders' objects.

- 3.4 The reasons for restricting “remote” A-boards (signs that are placed at a large distance from the premises) are:
- The A-board cannot be easily looked after by the relevant premises – e.g. if they blow over or are moved - as they are too great a distance to be monitored regularly
 - Allowing A-boards to be placed on adjacent streets to the actual premises resulted in large clusters of boards along a single street. These are usually streets that are already very busy with high numbers of traders’ objects as well as high numbers of pedestrians.
 - Remote A-boards often end up at junctions of busy streets, resulting in obstruction for pedestrians trying to cross.
 - Remote A-Boards are more likely to be left out overnight chained to street furniture, increasing permanent street clutter and any risks to public safety.
- 3.4.1 Restricting businesses to one board will reduce street clutter.
- 3.5 In March 2010 report from the Overview and Scrutiny Panel reported on the results of the Street Access panel’s findings, which included endorsement of the April 2009 changes to the highway licensing policy.
- 3.6 On 24th June 2010 a report detailing the Street Access Panel’s recommendations and officer response to these was agreed at Licensing Committee.
- 3.7 On 26th July 2010 the same report detailing the Street Access Panel’s recommendations and officer response to these was agreed at Environment cabinet.
- 3.8 Following the relevant decision-making bodies’ agreement, enforcement officers started working to the new policy and approached businesses that were in breach of this policy.
- 4. CONSULTATION**
- 4.1 An equalities impact assessment was carried out during the policy review in 2009 which involved consultation with a wide range of relevant groups, traders and local residents.
- 4.2 Full consultation was also carried out by the Overview and Scrutiny Street Access Panel including a public invitation to submit evidence and 3 public meetings where individuals and representatives of various organisations or businesses were invited to give evidence.

5. FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

- 5.1 There are no direct financial implications associated with this particular report.

Finance Officer Consulted: Karen Brookshaw Date: 06/06/2012

Legal Implications:

- 5.2 Section 130 of the Highways Act 1980 imposes a duty on the Council as highway authority to assert and protect the rights of the public to the use and enjoyment of any highway within its area and so far as possible to prevent the obstruction of the highway. However, the highway authority is empowered to licence the placing of certain objects on the highway, e.g. A boards under the provisions of Part VII A of the 1980, although in doing so it must have regard to the provisions, including the Council's duties, of the Disability Discrimination Act 1995. The panel must hear the appeal and determine this application having regard to its policy, legislation and the circumstances of this application.

Lawyer consulted: Rebecca Sidell

Equalities Implications:

The council seeks to ensure that public highways are used in a manner that maximises the benefit to the most number of users. However in the busiest areas of the city competing interests can come into conflict. It is the council's responsibility to manage these interests and to ensure equality of access particularly for those with mobility issues.

Sustainability Implications:

- 5.4 There are no sustainability issues identified.

Crime & Disorder Implications:

- 5.5 There are no direct crime and disorder implications arising from this report

Risk and Opportunity Management Implications:

- 5.6 Potential for the council to be held liable if it allows unmonitored items to be placed on the public highway.

Corporate / Citywide Implications:

- 5.7 If allowed then other business who have been refused permission to place remote advertising boards would reapply leading to a number of boards being placed citywide, normally in the busiest streets.

SUPPORTING DOCUMENTATION

Appendices:

1. Letter and emails from Alan Fitchett and photos/maps showing proposed location of Advertising Boards.

Documents In Members' Rooms

None

Background Documents

None

NORTH LAINE MARKET

5A, UPPER GARDNER STREET, BRIGHTON, EAST SUSSEX, BN1 4AN

Telephone 01273 600894

E-mail: northlainemarket@gmail.com

ANTIQUES:COLLECTIBLES:BRIC A BRAC:BOOKS:PICTURES

(& All Things Bright and Beautiful!)

Open 7 days a week

Proprietors: Alan Fitchett Antiques

Councillor Ian Davey

Kings House

Grand Avenue

Hove

BN3 2LS

7 April 2012

Dear Mr Davey,

I enclose a letter received from the City Council Highway Enforcement Dept. and my reply to them both of which I believe you will find self explanatory. I feel sure that the Highways Enforcement Officer is working under instruction and would not necessarily be able to vary any decision. I appreciate that I am not technically a 'constituent' of yours as, being a Business Rates payer I have no vote which may be considered as taxation without representation (the cause of the American Revolution) but something we all accept. I do hope, however, that notwithstanding the foregoing, you might, in some way feel able to intercede on our behalf. I say 'our' as it is not simply my business which we are sure will be seriously detrimentally affected by this sudden edict but , as I say in my letter, upwards of 50 people whose livelihoods will be affected in such a way that it may indeed cause hardship of a serious nature. We are, and have always been in friendly competition with other flea markets particularly Snoopers Paradise on the main nearby Kensington Gardens thoroughfare which needs no outside indicators of their location. We often find that, even though successful in our premises, some traders feel that they would possibly be more so in the street with a much greater natural footfall. The loss of business that we believe would ensue from not being able to place 'pointers' to our whereabouts would almost certainly result in defection from the most loyal stall holders who could not be blamed for not wishing to see their livelihood diminished to an uneconomic level. If that were the case yet another closed business and premises would be added to the many that have been claimed nationwide during the current recession. I understand that many outsiders (not in business) may think that the A boards are just some cheap advertising ploy which are totally superfluous and have no effect on business. If that were the case I promise you we would not have paid to have them made and put them out in rain, shine, snow, ice, wind and any other inclement effects of the English weather for ten and a half years, 362 days each year (we close Christmas Day, Boxing Day and New Years Day) and retrieved them at the end of each day no matter how uncomfortable. We have during our time in business garnered a goodly number of regular customers locally and from elsewhere who compliment us on how wonderful it is to have a 'shop' such as ours. This is their verbiage not mine. I wish you could hear some of the many comments we receive almost daily. It has made us proud and kept us going but we could not do so were it not for the many visitors (some of whom have told us that one highlight for their return to the City is our premises) who come from outside the area and from many overseas countries who would not naturally find us. They are as

delighted to be informed of our location by our boards as we are to see them. They repeatedly say, 'thank God for your board, I wouldn't otherwise have known you were here'. As far as I am aware there has not been a single criticism in ten and a half years of our boards and certainly no danger to any member of the public caused or even threatened. It is with this in mind that I am dismayed by this sudden and very negative change of mind which can only have detrimental and no positive affects. It seems a shame that a purely bureaucratic decision could threaten the existence of a number of businesses.

Not only does our flea market add to the cosmopolitan and 'bohemian' atmosphere of the North Laine particularly by being in a 'side street' and not in the always thriving main streets, but it actually serves some green purpose in that almost everything is second hand and by nature recycled or 'upcycled' in some way or other. We also resist the temptation of having plastic bags produced and printed as advertising like some others and reuse carriers, when required, which we encourage stall holders and customers to bring to us for re-use rather than throw them into the waste.

Unfortunately we see no alternative way of informing the visitors to the town of our whereabouts being off the mainstream flow as local advertising, online map references, web sites and the like only serve those who go in search as a preparation. Many of our visitors are purely visiting the City on business, pleasure or perhaps conferences and find us, from our boards simply by walking around or making their way from or to, for example, the station.

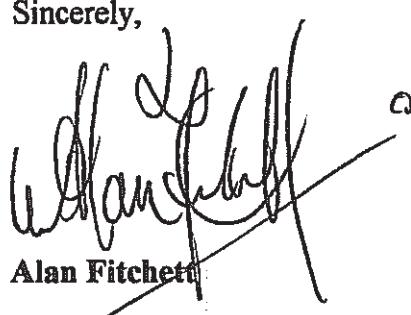
I, obviously cannot disclose the identity of the person concerned, but one of our employees discussing this matter informally with a senior member of the Council staff who seemed to appreciate the problem actually suggested 'buying some old bikes, attaching boards to them and chaining them to cycle parks' saying this could be a solution to the problem. I hope there is a better one as I really do not think that this would enhance the area, particularly if adopted by others too. I am feeling somewhat desperate, however!

I am sorry to feel the need to take up your valuable time in this regard but I cannot tell you how deeply I and others feel about this matter and how foreboding it is to imagine the result of the disappearance of the boards on our businesses. Sleepless nights are being experienced.

I thank you for your time and in anticipation of anything you may be able to do to assist.

With kind regards,

Sincerely,



Alan Fitchett

NORTH LAINE MARKET

5A, UPPER GARDNER STREET, BRIGHTON, EAST SUSSEX, BN1 4AN

Telephone 01273 600894

E-mail: northlainemarket@gmail.com

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(& All Things Bright and Beautiful!)

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Proprietors: Alan Fitchett Antiques

COPY

Attn Keith Gloster
Highways Enforcement Officer
Highway Enforcement
Room 500
Hove Town Hall
Hove BN3 3BQ

29 March 2012

Your Ref AMF/149 warning

Dear Sir

I was surprised and very disappointed to receive your somewhat menacing and threatening letter of the 23rd March 2012 instructing us to remove the A-boards placed to allow potential customers to find our premises. This business was formed in premises in Upper Gardner Street which we had previously used as a wholesale Antiques warehouse, our customers being British and mainly overseas dealers who knew us and our whereabouts from word of mouth, their own research, professional couriers, our international trade press advertising and our location near to numerous other Antiques shops and warehouses visited by the trade for 20 years or so. The world recession in the Antiques trade in 2000 resulted in our closing this business and as an alternative to closing the premises, selling or letting them and throwing our employees out of work as happened to almost all other local Antiques businesses it was decided to try to open an Antiques and Flea Market targeted at the public both locally and those tourists visiting the town. We realised that the location was difficult as there was very little passing trade and incentive for the public, local or otherwise to walk by our premises and discover us. We felt it necessary, therefore, to find a way of attracting customers and informing them of our whereabouts. Local advertising had limited results as the many tourists visiting the town (as it was then) were not aware of it and as the Council had used the rates , some of which contributed by us without representation or choice of Councillor to fund a signposted walkway which bypassed our street entirely it was incumbent upon us to find a solution. We decided that at our own expense to provide our own 'signposting'.

A-Boards were manufactured and placed strategically with almost instantaneous results. To this day almost no day passes when one or more visitor volunteers the information that they would never have found us without the presence of the boards (we are obviously unaware of how many more do not volunteer the information even if it is the case). Many of these are and have been overseas and distant British visitors who rely on the discovery of sufficient sites of interest to make their visit enjoyable and feel that it is worthwhile repeating it and to recommending family and friends.

As a City that relies to a great extent on visitors to fund its existence and the continuance of the businesses which help to fund it we felt, and still do, that we had provided a valuable amenity and visitors seem to agree. They also seem to feel that our boards are an additional amenity in providing information otherwise not provided. A similar letter was received some ten years ago signed, on that occasion, by Mr Ian Denver and we telephoned him to express our surprise at the Council's attitude

of boards but that the Council had a need to ascertain that they were correctly positioned and would not present a hazard. It seems that the Section of the Act (149 of Highways Act 1980) referred to in the heading of your letter actually was intended to prevent dangerous hazards and obstacles on the Highways and that a magistrates order may only be by-passed in the removal of same if the danger to the public is such that the delay in obtaining such an order, which may not necessarily be granted, is such that the delay would contribute to the danger to the public. Mr Denyer stressed that this was not the case in the matter of our boards as, if it were then the location of the steel large telephone junction box and large CCTV standard adjacent in the same pedestrian area would constitute a much greater hazard and would therefore need to be removed. He visited the writer by appointment and toured the location of the boards when he agreed that provided the boards always maintained their position there would be no hazard and also agreed that they provided a helpful amenity to visitors, particularly in an area promoted by the Council as lively and ‘bohemian’ where colourful and varied businesses and signs were required to avoid the mundane and boringly uniform of many town centres. He asked the writer to provide a plan of the location of any boards and asked that we ensured, on a regular basis daily, that they were not moved from the agreed locations so as not to provide any hazard in any way. We carried out these requests and received his verbal confirmation that all was well. We still regularly monitor the location of the boards throughout the day so as to comply with his request. It would seem that after 10 years there has been no report of danger, injury or inconvenience caused as a result of the location of our boards and fail to see why the attitude of the Council is so aggressive to a business that provides a popular amenity to the City at no cost to the City and where, should the boards be removed, the business may well be unable to attract sufficient custom in a ‘back street’ location to be viable. The business opposite (Thorn’s Foods) has recently closed after a very short period finding it difficult to attract sufficient custom. That resulted in the loss of several jobs and an amenity. Our Market supports or helps to support 50 or more people both in employment and stallholders as a means of carrying on their businesses, the closure of which would provide much hardship and add to the deserted and less attractive shopping experience experienced in the current economic climate in many towns and Cities. Surely any forward thinking Council should be encouraging enterprise which adds to the amenities and employment of the City at no cost to the ratepayers and indeed a contribution from the business in terms of business rates and in attracting return visitors.

I will be forwarding a copy of this letter to the North Laine Conservation Society, the local Councillor and any others I feel may support our cause including the press and our clientele (perhaps a petition) as I feel that a Judicial Review might come to a very different conclusion in interpreting the Act, bearing in mind the history (ten years without dire consequences). In any case, surely the wishes and need of the community should weigh greater than the needs of mindless bureaucracy.

I trust that common sense will prevail and invite you to reconsider the remarks in your letter after bringing the foregoing to the notice of the powers that be.

I look forward to hearing from you further.

Yours sincerely

Alan Fitchett



Highway Enforcement
Room 500
Hove Town Hall
Norton Road
Hove BN3 3BQ

The Manager/Proprietor
North Laine Antiques
5a Upper Gardner Street
Brighton
BN1 4AU

Date: 23/03/2012
Our Ref: AMF/149 warning
Phone: (01273) 292056

Re: Obstacles on the Highway

COPY

Dear Sir/Madam

NOTICE

Section 149, Highways Act 1980, Obstacles on the Highway
Gloucester Road c/o Sydney Street, Brighton

It has been noted that you are depositing an A Board on the public highway ,at the pedestrian area in Gloucester Road corner of Sydney Street . I can find no record of consent being granted by Brighton and Hove City Council for this object.

Under the powers conferred on the Council by Section 149 of the Highways Act 1980, you are now given notice that any such obstacles as you may have deposited on the highway must be removed and that the practice of depositing them there or any other place on the highway must cease immediately.

Please note that if any items are still found on the public highway after twenty eight days of the date of this notice without the relevant written permission, we may remove this item without further warning and will seek to reclaim our costs for removal and storage of impounded items.

Yours faithfully

Keith Gloster
Highways Enforcement Officer

(Appendix 1) Email from Alan Fitchett dated 5-5-12

Dear Mr Fisher

I thank you for your telephone call returning mine of the day previously and for your patient attention to what I had to say. I refer to the telephone conversation of Friday 4th May wherein I confirmed that as the proprietor of The North Laine Antiques and Flea Market, 5 Upper Gardner Street I should like to appeal the Council's decision not to allow us to place remote A Boards to indicate the location of our premises targeting casual out of town visitors and which we have displayed with great success for more than ten and a half years without incident and initially with the approval of an Officer of the Council, Mr Ian Denyer, who I understand is no longer in that position. I understand the reason for the Council's decision as a general principle but as we explained those good many years ago to Mr Denyer we believed and still do that the display of the boards was essential bearing in mind the location of our premises and the difficulty in finding means of advertising to target visitors from many parts of the Country and indeed from overseas. This proved to be highly successful and over the years I can honestly say that not a week has gone past when a number of visitors have actually thanked us for displaying the boards, allowing them to discover our premises. Mr Denyer kindly arranged to visit us and asked to be escorted around the sites of the boards. He understood our need and expressed his approval of the siting, emphasising that we must ensure that the boards were always placed in the same locations and monitored regularly to ensure they retained those positions. Until we received a letter from the Council Highways department some while ago we rigidly adhered to this agreement. When we were forced to remove the A Boards from these locations it became almost immediately evident that we were losing footfall and consequently sales. As I said to you on the telephone our figures show a fall in the number of items sold on weekdays and Sundays of approaching 50% (or sometimes more) with a slightly smaller fall on Saturdays when the street market helps to attract footfall. We will not pretend that we have not built up a regular clientele over the years which affords some regular trade but the nature of the business requires an additional constant flow of new customers like most shops of this type. The problem with our location is that the flow of foot traffic tends to be from Bond Street, through to Gardner Street and then the enlarged pedestrian crossing to the right of Gardner Street leads the casual browser into Kensington Gardens after which the area where our main remote board was positioned leads the natural flow into Sidney Street. The situation naturally reverses for those approaching from Sidney Street. All of these streets have excellent shops of an independent nature and it seems that the casual visitor will find and visit these without problem. Our premises is not even at right angles to any of these streets so does not allow the natural discovery; we are in fact parallel to Kensington Garden just to the west which is why we felt all those years ago that there was a need to point to our location along the natural track of the flow for those who might be interested. Mr Denyer understood this hence his approval. We understand that the Council are trialling signs to help visitors to discover businesses off the main thoroughfares and we would support these if it were decided that they

should be located in our area but it would be difficult for these to indicate the location of our premises which the boards do, informing those who might be interested that they need to turn left, then left again and they will find that in 100 yards or so they will find a Market that may well be of interest to them. This is achieved by a bright sign with our name and a chalkboard lower section with an arrow and then the words below ‘first left then 100 yards’ This may prove to be difficult on alternative signs which may well allow the mention of the existence of a business but unless it is immediately off the location of the sign would be difficult to provide directions. Our problem is exacerbated by the need to keep our stallholders to allow the business to maintain its interest to the public with its ever changing supply of interesting and useful goods which can only be achieved by relatively constant sales. Such stallholders as any Antiques or Flea Market proprietor will tell are somewhat fickle and make decisions as to continuance based on relatively short term results. We have already received notice from one stallholder who is unhappy with the fall in sales and regrettably if this continues in even a relatively small way the flow away becomes unstoppable as each follows the trend. This would very quickly threaten the viability of the business and closure would be the only choice which after more than ten years of hard work to build up a business which regularly we are told is the ‘favourite shop’ of many would be a great shame, a loss to the City and its visitors not to mention the loss of jobs and livelihoods and yet another closed and blank premises. We hope that the Council will view our appeal with sympathy and understanding and look forward to hearing from you further.

With Kind Regards

Alan Fitchett

