

<b>DECISION-MAKER:</b>	PLANNING AND RIGHTS OF WAY PANEL
<b>SUBJECT:</b>	SECTION 102 ORDER: VICTORIA ROAD FRONTAGE, WOOLSTON
<b>DATE OF DECISION:</b>	16 OCTOBER 2012
<b>REPORT OF:</b>	SENIOR MANAGER, PLANNING, TRANSPORT AND SUSTAINABILITY IN CONSULTATION WITH THE HEAD OF LEGAL, HR AND DEMOCRATIC SERVICES
<b>STATEMENT OF CONFIDENTIALITY</b>	
None	

### **BRIEF SUMMARY**

This report establishes that the current display of goods for sale along the frontage of the units whilst not representing a breach of planning control, nor obstructing the public highway, causes harm to the visual amenities and character of the District Centre.

That in order to address the harm to amenity caused, the use of Section 102 is the only planning tool available. This is notwithstanding the possibility of costs incurred by potential compensation claims and public inquiry or that this is not a 'quick fix' solution due to the order needing confirmation by the Secretary of State.

### **RECOMMENDATIONS:**

That the Head of Legal, HR and Democratic Services be authorised:

- (i) To write to the owners of the land adjoining 16-18 Victoria Road requesting them to remove the second hand furniture from their unit's retail frontage within 7 days; and
- (ii) If the furniture is not removed within 7 days from the date of the letter, to serve a Section 102 Order on the 1m wide private forecourts to the front of units comprising 16 and 18 Victoria Road, Woolston on grounds of amenity (see attached plan) imposing a condition on the continued use of the private forecourts for the display of retail items requiring any retail use of the forecourt to be subject to the submission of a scheme to be approved in writing by the LPA detailing:-
  - i. the manner in which items are to be stored and/or displayed on the forecourt.
  - ii. The type of items to be stored and/or displayed on the forecourt.
  - iii. The area of the retail display

### **REASONS FOR REPORT RECOMMENDATIONS**

1. The order would affect 16 and 18 Victoria Road, on the north-west side of this street, which comprise a range of retail and food and drink uses and benefit from a 1m wide private frontage forecourt.
2. Nos. 2 and 2a Victoria Road and those units on the eastern side of the road (Nos. 1-51 inclusive) are directly abutted by highway land and do not have a private space to the front.

3. No.18 Victoria Road is currently trading as a second-hand furniture shop. The adjacent unit 16 is currently vacant. Items of furniture and other goods are currently being stored along this private frontage (see photographs dated 3 December 2011, 18 July 2012 and 4 & 20-24 September 2012) and left out overnight.
4. A number of complaints have historically been received by both members of the public (including residents and traders) and Councillors regarding the perceived 'eyesore' of the display of secondhand furniture on the shop front of both 18 Victoria Road and the shop fronts of neighbouring vacant commercial premises. Of more recent time, the former Woolworth premises at 8-14 Victoria Road have become re-occupied and now display electrical goods in the shop window.
5. The items, stored and displayed on the land are in connection with a legitimate A1 retail use. It is understood that consent of the owners of the adjacent vacant units has been sought and gained to display items. The displayed items however do not relate to the vacant retail units they front, except for No. 18 Victoria Road.
6. Planning consent is not required to display goods in this way nor has there been any breach of planning control. As the land is not highways land there are no other Council powers which could be used to prevent the spread of the second hand furniture from No. 18 Victoria Road.
7. Section 102 has been identified as the only planning tool available to deal with the current situation.
8. This power is rarely used because affected retailers could be liable to receive compensation. Also, the Order has to be confirmed by the Secretary of State before it becomes effective.
9. The procedure is that when the LPA submits the Order to the Secretary of State for confirmation, notice is served on the owners and occupiers of the land affected. Persons served with the Order can be heard by the Secretary of State, who then holds a Public Inquiry to hear such objections in much the same way as planning inquiries are held.
10. Section 102 enables that the use of land should be discontinued, or that any conditions should be imposed on the continuing use of land.
11. In deciding whether or not to issue the Order, the statutory test is set out in section 102 of the Act, and requires the Council to assess whether it appears "*expedient in the interest of the proper planning of their area (including the interests of amenity)*" to make such an order.
12. In this instance it is intended to seek an Order to impose the above mentioned condition on the display of goods rather than remove the retail use from the frontage. This is because evidence suggests goods have been displayed outside some of these units for a number of years without causing harm to the amenity of the area. It is the uncontrolled spread of the display of second hand furniture which affects the vitality and attractiveness of Victoria Road as a retail area and is generating complaints. This is contrary to Policy CS3 of the Core Strategy (January 2010).

13. Provided that the display of retail goods is controlled through the approval of schemes on the frontage areas then there is no reason why such displays cannot contribute to the attractiveness of the street scene. To remove the right to use the frontages areas for the display of goods altogether could be to the detriment of other traders and could ultimately reduce the interest of the street scene and the vitality of the defined Woolston District Shopping Centre.
14. The Council is seeking to utilize a legitimate planning tool in the interests of amenity of the area.

**DETAIL (Including consultation carried out)**

15. Complaints are recorded to have been first received by the Council in March 2008 that the trader operating from premises at 18 Victoria Road was storing second hand furniture on the frontage of the property and also that of adjacent frontages of shops that were vacant.
16. From the outset it was concluded that 18 Victoria Road and the shops to both sides had lawful use as retail units and that this included the shop fronts and therefore the use of the forecourts for displaying second hand furniture for sale was a permitted activity that did not breach planning controls and fell within a retail use. It was claimed by some complainants that the owners of adjacent units had not given permission for the use of their forecourts by the trader at 18 Victoria Road but this is a civil matter and not a planning issue.
17. The premises at 18 Victoria Road have been visited by officers of the Council from various departments, including City Patrol and Highways but the use of the frontages of the shops and adjacent premises has continued unabated.
18. Officers from the Planning Enforcement Team visited the premises on 11/05/09 and spoke to the owner of the shop. He claimed that he had permission to use the frontages of the adjacent shop fronts for the owners and was actually providing a service to the community. He was told of the Council's intentions of restricting the use of the shop frontages and he said he would seek to take action against the Council. He felt he was being victimised by the Council.
19. Since that time, Panel, at its meeting 26 May 2009, did resolve that the Solicitor to the Council serve such an Order, were the pavement not to be cleared of this furniture. Furniture was removed for a time, but the problem has now re-occurred. This was confirmed by visits undertaken 26.2.2010, July 2010, 14.9.2010, after which the problem again abated. This may have been largely due to the formerly vacant Woolworths premises at 8-14 Victoria Road becoming re-occupied by a domestic electrical goods retailer. The problem was re-observed during the Woolston Festival on the weekend of 3 and 4 December 2011, also confirmed by recent visits of the Planning Enforcement Team. The Out-of-hours Service has even more recently confirmed and photographed furniture being left out overnight on three separate occasions in one week.
20. The owners of the affected units have been notified of this report.
21. It should be noted the display of goods to the front of retail units is by no means isolated to Victoria Road, Woolston. Evidence shows that other traders within the same district centre continue to display goods on the public

highway and also within the same frontage to which the Order would relate.

22. In cases where goods are displayed on the public highway these may be resolvable by using highways act powers to prevent obstructions or consideration could be given as to whether to introduce a street trading licensing regime. However this would be a costly solution.
23. In cases where goods are displayed on private forecourts, which is typical of a number of local and district centre's and the Shirley Town Centre and the City Centre, Councillors may wish to consider the consistency of approach that may be expected by pursuing the Order in this particular situation.

#### **ALTERNATIVE OPTIONS CONSIDERED AND REJECTED**

24. As the activity relates to private land for which there is a legitimate authorised retail use there are no existing planning enforcement or highways measures available to be used.
25. Section 215 Notices, which are regularly served on land which is deemed to be untidy or detrimental to amenity can only be used where there is a breach of planning control.
26. The Council could choose not to take any action. However, this would allow the perpetuation of a situation that is considered to harm the character and appearance and therefore the amenity of the area.

#### **RESOURCE IMPLICATIONS**

##### **Capital/Revenue**

27. Please see the financial implications outlined under legal implications

##### **Property/Other**

28. None.

#### **LEGAL IMPLICATIONS**

##### **Statutory Power to undertake the proposals in the report:**

29. The imposition of the Order would need to be confirmed by the Secretary of State.
30. The Secretary of State's confirmation of an Order would be required even if the Order was not opposed. An objection to the Order would almost certainly lead to the holding of a public inquiry.
31. A Discontinuance Order would require the payment of compensation by the Council to any person who suffers damage in consequence of the Order by depreciation in the value of his land or by being disturbed in his enjoyment of land; and in respect of expenses incurred in carrying out works in compliance with an Order.
32. In deciding whether or not to issue a Discontinuance Order, however, the amount of possible compensation and/or the Council's ability to pay such compensation is not a relevant consideration.
33. If the Council is influenced in any way by financial considerations in reaching its decision as to whether or not to serve a Discontinuance Order, the decision could be flawed and open to challenge in the Courts.

[Note:- This matter has been well established in case law. The principle authority being *Alnwick District Council v Secretary of State and Safeway Stores PLC (1999)*].

34. In deciding whether or not to issue a Discontinuance Order the Council needs to apply itself to the statutory test set out in section 102 of the Act, namely whether it appears “*expedient in the interest of the proper planning of their area (including the interests of amenity)*” to make such an order.

**Other Legal Implications:**

35. None.

**POLICY FRAMEWORK IMPLICATIONS**

36. The report and recommendations would impose conditions on land which is designated as part of the Woolston District Centre within which retail and others uses providing a direct service to the public are supported.

<b>AUTHOR:</b>	Name:	Steve Lawrence	Tel:	023 8091 7547
	E-mail:	Steve.Lawrence@southampton.gov.uk		

**SUPPORTING DOCUMENTATION**

**Non-confidential appendices are in the Members' Rooms and can be accessed on-line**

**Appendices**

1.	Location Plan 1:1250 Highlighting area of land to be covered by the order and Photographs of the site taken 3 December 2011, 18 July 2012 and 4 and 20-24 September 2012
----	--

**Documents In Members' Rooms**

1.	None
----	------

**Integrated Impact Assessment**

Do the implications/subject/recommendations in the report require an Integrated Impact Assessment to be carried out.	No
--	----

**Other Background Documents**

Title of Background Paper(s)	Relevant Paragraph of the Access to Information Procedure Rules / Schedule 12A allowing document to be Exempt/Confidential (if applicable)
------------------------------	--

1.	City of Southampton Local Development Framework Core Strategy (January 2010)
2.	Complaints received in respect of the developer – exempt under terms of Schedule 12A of Local Government Act 1972.

**Integrated Impact Assessment and Other Background documents available for inspection at: Gateway Southampton**

<b>WARDS/COMMUNITIES AFFECTED:</b>	WOOLSTON
------------------------------------	----------