

# LICENSING SUB COMMITTEE

## BUSINESS AND PLANNING ACT 2020 APPLICATION FOR PAVEMENT LICENCE Nowhere bar Queen Street, Morecambe

### DETERMINATION OF APPLICATION FOLLOWING RELEVANT REPRESENTATIONS

Monday 24 August 2020

#### Report of Licensing Manager

#### PURPOSE OF REPORT

To enable members to determine an application for a Pavement Licence under Part 1 of the Business and Planning Act 2020 submitted by Craig Rawes in respect of Nowhere Bar, Queen Street Morecambe, following the receipt of relevant representations.

The report is public

#### RECOMMENDATIONS

The Sub Committee is requested to determine in the light of the representations made, information presented at the hearing and having regard to the requirements of

- The Business and Planning Act Part 1
- Council's Pavement Licence Policy
- Government Guidance

whether to grant the application as requested, modify any conditions of the licence, or to reject the whole application. Members are reminded that they should state the reasons for their decision.

#### 1.0 Introduction

1.1 On 22 July 2020 The Business and Planning Act 2020 came into force.

1.2 Part 1 of the Act deals with the consumption and sale of food and drink outdoors, and relates to two particular licensing issues

- The introduction of Pavement licences

- The modification of premises licences to authorise off sales of alcohol for a limited period
- 1.3 Historically the Council has dealt with the Licensing of Street/ Pavement cafes utilising the provisions contained within the Highways Act 1980. The Business and Planning Act Pavement licence provisions provide for similar provisions but detail a much quicker administrative process and facilitate the granting of licences up to 30 September 2021
- 1.4 The Business and Planning Act 2020 (the “Act”) now introduces a “Pavement Licence” for the licence holder to put removeable furniture on part of the highway **adjacent** to the premises to sell / serve food and/or drink and also allows people to consume food and or drink supplied from or in connection with the premises. In effect this allows the area to be used as an extended seating area to the premises or to be a stall from which food/ drink is sold/ served. The licence can be applied to any premises which sells food and/or drink for consumption on or off the premises and is not restricted to those premises where alcohol is sold. For example, it can be used by a café to set up an ice cream stall outside,) or it can be used to facilitate what we traditionally regard as a street café.
- 1.5 The Act also introduces provisions for the automatic modification of premises licences (issued under licensing Act 2003) to authorise the “off-sale” of alcohol for a limited period. The period will end on 30 September 2021. The Act does include measures to exclude certain premises that are currently specifically excluded from selling “off sales” and also makes it clear that those off sales are only permitted during the hours that the premises is licensed for on sales. There are also provisions within the Act regarding proposals to review licences in respect of off sales that have proved problematic.
- 1.6 The above two provisions are being introduced as a temporary measure (up to and including 30 September 2021) in order to facilitate the operation of business within the restrictions / guidance currently in place regarding the covid 19 pandemic. The pavement licence provision provides a fast track application procedure detailing a 7 days consultation period and a subsequent maximum 7 day period in which those applications must be determined, failure to do so results in licences being granted by default

## **2.0 Pavement Licences**

- 2.1 The implementation of relevant procedures and processes to deal with pavement licences was regarding as a matter of urgent business, due to covid 19 restrictions imposed on businesses. The matter was considered by the Chief Executives representative in consultation with the Chair of Licensing Committee and was approved on 31 July 2020. The decision will be reported to the Councils Licensing Committee at its meeting on 27 August.
- 2.2 The Business and Planning Act details the following
- Applications must be made in writing to the Local Authority
  - Applications must be accompanied by a fee of not more than £100 as the local authority may require

- Applications must contain specific information; these are not detailed in this briefing paper but replicate the information currently required by the Council in respect of Highways Act licence applications
- The local authority has to publish the application and publicise the 7 day consultation period
- The applicant must place a notice at the premises advising of the application, the details of the notice requirements are not provided in this report but largely replicate the Licensing Act public notice requirements. The notice must stay in place until the end of the consultation period
- The local authority must consult the highways authority and any other persons it considers appropriate regarding the application.
- The local authority must take into account any representations made during the consultation period
- The local authority has 7 days following the close of consultation to determine the application, failure to do so means that the licence is granted by default
- The local authority can grant, or refuse the licence in respect of any or all of the purposes and or in respect of some or all of the highway area
- The licence if granted, cannot be for a period of less than 3 months and can be up to and including 30 September 2021
- The licence will be subject to default mandatory conditions in respect of provisions of no smoking areas and access for mobility impaired and can be subject to reasonable conditions imposed by the local authority
- Pavement licences do not repeal the provisions of the Highways Act Licences, as such existing highways licences remain in place and valid
- There are a number of provisions detailed in the Act in respect of enforcement powers, these include the facility to revoke the licence in respect of public health or safety concerns, anti-social behaviour, public nuisance or obstruction of the highway.
- The Act details that a pavement licence constitutes deemed planning permission.

2.3 A copy of the Councils Pavement Licence Policy approved on the 31 July is attached at **Appendix A**. The policy outlines provisions in place in respect of pavement licences and also details, standard licence conditions (Appendix 2 within the policy), National Licence Conditions (Appendix 3 within the policy) and constitutional decision making (Appendix 4 within the policy )

2.4 Attached at **Appendix B** is a copy of the Governments Statutory guidance issued in respect of Pavement Licences

### **3.0 The Application**

3.1 Attached at **Appendix C** is the application received from Craig Rawes on 14 August 2020 in respect of the premises Nowhere bar, Queen St Morecambe. Information contained in the application is not replicated within the body of the report but can be read within **Appendix C**.

3.2 The required public notice has been provided by the applicant and this is detailed at **Appendix D1**. The notice was checked by a Council Licensing Officer on 17 August 2020 and the photograph taken by the officer at the time of the visit is attached at **Appendix D2**

3.3. Consultation has been undertaken in accordance with the policy and representations received are detailed at **Appendix E**

## **Objections**

**Appendix E1** Statement from Insp James Martin Lancashire Police

**Appendix E2** Objection from Sgt Helen Parkinson Lancashire Police

**Appendix E3** Objection from Richard Walsh Environmental Health, Lancaster City Council

**Appendix E4** Objection from Fiona Inston Public Protection Manager, Lancaster City Council

**Appendix E5** Objection from Elizabeth Watton Rnvironmental Health Lancaster City Council

**Appendix E6** Objection from Mrs Daly of the Bridal shop

**Appendix E7** Objection from Ms Carr of the Bridal Shop

**Appendix E8** Objection from Highways Lancashire County Council

**Appendix E9** Objection Lancashire Fire Service

**Appendix E10** Objection A Brennan

## **Supporting Representations**

**Appendix E11** Support from BID

Details of the representations listed in Appendix E are not replicated within the body of the report.

Due to the statutory timescales for determining pavement licences this report has been prepared prior to the close of consultation period. The content of this report reflects representations received as at 2pm on Thursday 20 August. Any further representation received prior to the close of consultation will be forwarded to the applicant and members of committee upon receipt.

### **4.0 The hearing**

4.1 The applicant has been invited to the hearing and has been provided with a copy of objections received

4.2 The objector are being invited to attend the hearing

4.3 In making the decision the Sub Committee has three options

- i. To grant the licence as applied for including the imposition of National Licence Conditions (as per policy Appendix 3) and Lancaster City Councils Standard Licence Conditions (as per policy Appendix 2)
- ii. To grant the licence with modification as detailed by the Committee including the imposition of the National Licence Conditions and Lancaster City Council Standard Licence conditions with or without modification
- iii. Refuse the application

4.4. In making the decision the committee should have regard to the following

- i. Information provided in the application and by the applicant at the hearing
- ii. Information provided by the objectors in their written objection and at the hearing
- iii. The Councils Policy in respect of Pavement licences attached at Appendix A particular regard should be had to the issues detailed in para 3.5 of the Policy
- iv. The Statutory guidance in respect of Pavement licences attached at Appendix B

4.5 Members are reminded that they must follow the rules of natural justice, and must also consider human rights implications. In particular, in accordance with Article 6, all parties are entitled to a fair hearing. Consideration also needs to be given to the right to respect for private and family life and home, contained within Article 8, although this is a qualified right, and interference is permitted where this is in accordance with the law, or is necessary in a democratic society in the interests of public safety or the prevention of crime and disorder, or for the protection of the rights and freedoms of others. Article 1 of the First Protocol provides that every person is entitled to the peaceful enjoyment of his possessions, although again this right is qualified in the public interest.

4.6 The Business and Planning Act does not provide for a right of appeal against a decision of the Council in respect of determining Pavement licence applications, however where a party considers that there has been maladministration, the complaints procedure and the Local Government Ombudsman can investigate . In addition, a judicial review process is available via the High Court

## 2.0 Conclusion

2.1 Having regard to the information contained in the report together with additional relevant information provided at the hearing the Subcommittee is asked to determine the application. Members are reminded that they should state the reasons for their decision.

<b>CONCLUSION OF IMPACT ASSESSMENT</b> (including Diversity, Human Rights, Community Safety, Sustainability and Rural Proofing)	
None.	
<b>FINANCIAL IMPLICATIONS</b>	
Financial Services have not been consulted as there are no financial implications.	
<b>LEGAL IMPLICATIONS</b>	
The Business and Planning Act 2020 provides the statutory framework for Pavement Licences. The Councils constitution has been updated to detail the decision making process in respect of Pavement Licences and this report has been prepared in accordance with the legal framework	
<b>BACKGROUND PAPERS</b>	<b>Contact Officer: Jenette Hicks</b>
None	<b>Telephone: 01524 582732</b>
	<b>E-mail: <a href="mailto:jhicks@lancaster.gov.uk">jhicks@lancaster.gov.uk</a></b>
	<b>Ref:</b>