



- 2.1 The Business and Planning Act 2020 allows additional outdoor space to be lawfully licensed and used by premises through a system of Pavement Licences.
- 2.2 The Act introduces a ‘streamlined’ application process which will enable the operators of pubs, cafes and restaurants to apply for a Pavement Licence. A business which uses (or proposes to use) premises for the sale of food or drink for consumption (on or off the premises) can apply for a licence. Businesses that are eligible include: public houses, cafes, bars, restaurants, snack bars, coffee shops, and ice cream parlours.
- 2.3 A licence permits the business to use furniture placed on the highway to sell or serve food or drink and/or allow it to be used by people for consumption of food or drink supplied from, or in connection with the use of the premises.
- 2.4 In addition to locally adopted conditions, pavement licences are subject to two national conditions; a no-obstruction condition and a no smoking condition.
- 2.5 The no-obstruction condition is a condition that the licence must not have the effects set out in section 3(6) of the 2020 Act. When determining whether furniture constitutes an unacceptable obstruction in light of the no-obstruction condition, the provisions require that local authorities consider the needs of disabled people. In order to do this, authorities should consider the following matters when setting conditions, determining applications (in the absence of local conditions), and when considering whether enforcement action is required:
- a) Section 3.1 of Inclusive Mobility sets out a range of recommended widths which would be required, depending on the needs of particular pavement users, but is clear that in most circumstances 1500mm clear space should be regarded as the minimum acceptable distance between the obstacle and the edge of the footway,
  - b) any need for a barrier to separate furniture from the rest of the footway so that the visually impaired can navigate around the furniture, such as colour contrast and a tap rail for long cane users. In some cases, it may be appropriate to use one or more rigid, removable objects to demarcate the area to which the licence applies, for example wooden tubs of flowers. However, this will need to be balanced to ensure any barriers do not inhibit other street users, such as the mobility impaired, as such barriers may create a further obstacle in the highway;
  - c) any conflict of street furniture with the principal lines of pedestrian movement particularly for disabled people, older people and those with mobility needs. The positioning of furniture should not discourage pedestrians from using the footway. The available route must be entirely clear and not pass through an area with tables and chairs;
  - d) so that where possible furniture is non-reflective and of reasonable substance such that it cannot easily be pushed or blown over by the wind, and thereby cause obstruction – for example, the local authority could refuse the use of plastic patio furniture, unless measures have been taken to ensure it is kept in place.

### **3. Determination**

- 3.1 Council resolved to delegate authority to the Director of Environment, in consultation with the vice-chair of the Licensing Committee, to determine contentious applications under the Business & Planning Act 2020.

#### 4. Consultee Comments & revised application

4.1 4 representations were received in relation to this application. These are listed in **Appendix C**. The majority of the concerns raised relate to excessive obstruction of the highway outside the premises.

4.2 All items need to be portable enough to be brought in at the end of the permitted period of each working day or in the event of an emergency.

#### 5. Officer comments

5.1 Social distancing – Whilst the plan accompanying the application indicates the possibility of maintaining a 1.5m clear space between the obstacle and the edge of the footway, the remaining unobstructed space of 0.4m is too narrow to allow safe passage without the need for pedestrians to step into the road, which goes against the official guidance.

Additionally, 0.4m is too narrow for pedestrians with mobile & visual impairments as well as pedestrians with children’s strollers

5.2 The following matters are to be considered when determining this application:

- a) Anti-social behaviour – The guidance makes it clear anti-social behaviour is relevant in so far as it “will ... create nuisance to neighbouring occupiers by generating anti-social behaviour.”
- b) Fouling – Weight to this objection should carefully be weighed because it would only be relevant to the application in so far as it relates to anti-social behaviour and there is evidence to support the ascertain.
- c) Noise nuisance – Should only be considered relevant in the context of anti-social behaviour and impact on local amenity. The last complaint received by Environmental Health was in May 2019 regarding noise from this property.

#### 6. Officer recommendation

6.1 The officer recommendation is that this application be refused.

##### Reason(s):

- a. The application does not satisfy the Pavement Licence conditions: Condition “Means of enclosure – “When in use the pavement area will need to be enclosed, to demarcate the permitted area and contain the tables and chairs, making it distinguishable to other pavement users, and particularly to assist blind and visually impaired pedestrians”

Reason: Applicant is not proposing to fully enclose the licensed area.

- b. “The layout of furniture and means of enclosure will only be approved if adequate provision has been made for customers with disabilities”

Reason: Insufficient unobstructed space as outlined in 5.1 of this report.

- 1. The application does not comply with official guidance:

Paragraph 4.1 – “any need for a barrier to separate furniture from the rest of the footway so that the visually impaired can navigate around the furniture, such as colour contrast and a tap rail for long cane users”

Reason: Applicant is not proposing to fully enclose the licensed area.

Paragraph 4.1 – “any conflict of street furniture with the principal lines of pedestrian movement particularly for disabled people, older people and those with mobility needs. The positioning of furniture should not discourage pedestrians from using the footway. The available route must be entirely clear and not pass through an area with tables and chairs;”

Reason: Insufficient unobstructed space as outlined in 5.1 of this report.

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**Background Papers**

Service Records

**Case Officer**

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