



**RECORD OF DECISION TAKEN UNDER DELEGATED
AUTHORITY
(Not a Key Decision)**

Date of Decision: 24/07/2020

**Executive Decision or 'Other Decision' to be
published?: Yes**

TITLE: Temporary Pavement Café Licences in West Lancashire

DECISION:

- i) To authorise the Corporate Director of Place and Community to deal with all matters under the Business and Planning Act 2020 and any subsequent legislation, regulations or guidance regarding Temporary Pavement Licences, including to develop and implement a system for the administration, grant and enforcement of temporary pavement café licences, set conditions for licences, draft and review policies, enforce requirements and revoke licences, and to delegate those functions to officers as they see fit.**
- ii) To confirm that this Council will not charge a fee for considering applications for Temporary Pavement Licences.**
- iii) To confirm that, while social distancing restrictions remain in place, enforcement action will not be taken against outdoor seating areas associated with hospitality businesses on non-highway land in West Lancashire, so long as they do not restrict safe pedestrian or vehicular access on an adopted highway, public right of way or any other established public footpath/cyclepath, or cause significant harm to the amenity of neighbouring uses.**
- iv) To authorise the Corporate Director of Transformation and Resources to agree, on a case by case basis, the operation of pavement cafés on Council owned land with terms broadly similar to those for the temporary pavement café licences on highway land, and to delegate those functions to officers as they see fit.**

AUTHORITY:

Constitution 4.2: Proper Officer Provisions and Scheme of Delegation to Chief Officers
Issue Date 04.11.19

4.21 To take any action on behalf of the Council, following consultation with the Leader and relevant Portfolio Holder or the Chairman of the appropriate committee, in cases of urgency requiring immediate decisions, and where it

would be unreasonable or impractical to convene a meeting.

REASONS FOR DECISION

As set out below

Wards affected: Borough-wide

1.0 BACKGROUND & CURRENT POSITION

- 1.1 Due to the COVID-19 outbreak, and the associated lockdown, businesses on the High Street have, overall, been negatively affected due to loss of income and custom. As the lockdown measures ease and High Streets re-open, businesses face new challenges with regards social distancing measures which will continue to affect their income as these measures will cause a slower service in many cases and limit the number of customers able to be in the business premises at any one time. This will particularly affect those businesses in the hospitality industry (e.g. cafés, bars and restaurants).
- 1.2 One way of helping hospitality businesses to serve more customers is to enable them to have outdoor tables and seating, meaning that they can make up for the reduction in customers they are able to have in their premises and do so in an open-air and socially distanced way. However, such outdoor tables and seating needs to be managed carefully so that it does not impede movement along the street or create social distancing issues on the street (especially where streets are narrower).
- 1.3 Under normal circumstances, any outdoor seating area associated with a café, bar or restaurant would require planning permission from the local planning authority and a licence from the highway authority, but applying for these not only involves fees, it can also take some time to be processed. In the current context of recovery from the COVID-19 lockdown, such costs and timescales are inhibitive to business recovery, and so to the recovery of the High Street generally.
- 1.4 As a result, Parliament has just passed the Business and Planning Act 2020 which includes the parameters for a new temporary pavement licensing process which rolls the normal licensing and planning application processes into a single, quicker and more streamlined process in order to grant temporary licences for pavement cafés on highway land until September 2021. This report sets out the details of how the Council will implement this new temporary licensing process with immediate effect.
- 1.5 It should be noted that this new process will only cover outdoor seating (for food and drink) on highway land. Any proposal for outdoor seating on non-highway land will still require planning permission in the usual way and so this report also considers whether it is expedient to take enforcement action at this time where outdoor seating is put in place on non-highway land without planning permission, and how the matter of outdoor seating should be managed on Council-owned

land such as at Wheatsheaf Walk in Ormskirk and at Sandy Lane and Digmaor local centres.

2.0 ISSUES & PROPOSALS

Temporary Pavement Licences

2.1 With the assent of the Business and Planning Act 2020 in Parliament, the Council are now required to have a process for issuing a form of permit to be known as a Temporary Pavement Licence (or Temporary Pavement Café Licence), dealing with applications for pavement cafés on highway land. To this end, the documents provided in the appendices of this report set out:

- The Policy against which such applications will be considered (Appendix A)
- The set of Conditions which will typically be applied to any temporary pavement licence for a pavement café / outdoor seating (Appendix B), although it should be noted that the Council will be able to include bespoke conditions related to a specific licence where needed
- The online Application Form that applicants will need to use when submitting an application (Appendix C) – applicants will also need to provide a plan of the area they are seeking a licence for
- The Notice that applicants will need to display on the premises to which their application relates (Appendix D)
- The standard Licence that will be issued (with the relevant conditions and a plan of the licensed area) when the Council decides to grant a temporary pavement licence to a pavement café / outdoor seating area (Appendix E)

2.2 In terms of the processing of these applications, the Act requires applications to be considered within 14 days of the receipt of the application, and any applications not decided within 14 days will be deemed to have been given a licence with only the nationally prescribed conditions included. As such, the Council needs to establish a quick and efficient process to consider these applications and meet the requirements of the Act for consultation.

2.3 Upon receipt of a temporary pavement licence application, the first 7 days are given over to consultation, with the applicant required to display the notice at Appendix D at their premises and the Council required to publish the application online, enable any interested party to submit comments on the application and consult directly with colleagues in environmental health and in licensing, Lancashire County Council as highway authority and any other organisations that the Council considers appropriate (for example, the emergency services). It is also proposed that applications will be circulated to all Members so that their comments can also be considered. Once the 7 days has finished (and so consultation closes), the Council then have 7 days to consider all submissions and make a decision.

- 2.4 Given the need for this quick turnaround in applications and decisions, it is proposed that the decisions themselves need to be delegated to the Corporate Director of Place and Community or officers within their Directorate to decide an application within that second 7 day period.
- 2.5 To aid a quick turnaround in applications, the proposed Policy and set of Conditions (appendices A and B to this report) will be available on the Council's website to guide applicants towards an appropriate application submission (for example in relation to the location of the pavement café area they are applying for) and the website will also encourage applicants to make contact with the Growth & Development Service before submitting their application to discuss what they propose to apply for, in order to avoid the submission of applications which do not accord with the Policy and/or Conditions (and so will likely be refused).
- 2.6 In relation to the length of the temporary pavement licences that would be granted, the Act allows the Council to grant licences that would last up until 30 September 2021 and it is likely that, in most cases, this is the duration that the Council will allow the licence for, to provide businesses with the certainty they need to invest in pavement cafés while social restrictions remain in place.
- 2.7 The legislation for Temporary Pavement Café Licences allows the Council to charge a fee of up to £100 per application, to help cover the administrative costs of the process. However, at this time when businesses are struggling following the lockdown, it is proposed that this Council does not charge such a fee. This matter is discussed further in section 5 below.
- 2.8 With regard the matters that will be of most importance in considering applications under this process, for the majority of the borough, the key issue will be ensuring the pavement cafés do not restrict safe pedestrian or vehicular access on an adopted highway, public right of way or any other established public footpath / cyclepath, or cause significant harm to the amenity of neighbouring uses, which is the primary focus of the Act and its accompany guidance. However, within the pedestrianised area of Ormskirk Town Centre, the issues are more complex and so a wider range of considerations have influenced the Policy and Conditions in relation to temporary pavement licences in Ormskirk Town Centre.

Pavement Cafés in Ormskirk Town Centre

- 2.9 Firstly, the presence of the market (and other periodic events) in Ormskirk means that the needs of the hospitality business and the need to maintain a safe access are not the only factors to consider in considering a Temporary Pavement Café Licence in Ormskirk Town Centre. The market and special events are a key driver for footfall (and return visits) in the town centre and so, without it, the town centre would not be as viable and many of the businesses in the town centre would struggle due to reduced custom.
- 2.10 As such, on days when the market or special events operate, a compromise needs to be accommodated to allow the market / event to take place but still allow some outdoor seating. This is proposed through the Policy (cf. paragraph 9.9 of the Policy document at Appendix A) by encouraging different

arrangements for pavement cafés for businesses on the affected parts of Aughton Street and Moor Street on market / event days compared to non-market / event days to ensure there is sufficient space for both the market and pavement cafés and enough space to allow safe (and socially distanced) access through the town centre for pedestrians.

- 2.11 On market / event days, for most businesses on Aughton Street and Moor Street, pavement cafes would be restricted to an approximately 2.5m strip directly in front of their premises, but on non-market / event days, the pavement cafés would be relocated to the middle of the street and be allowed to take up more space, to enable easier direct access to other shops and businesses along either side of the streets whilst creating a more active and attractive environment in the street due to the pavement cafés (see plans at Appendix F for reference).
- 2.12 Secondly, the historic character of Ormskirk town centre affects how the Council should consider pavement cafés in the town centre in two main ways. From the point of view of wanting to preserve and enhance the historic character of the town centre, the way that pavement cafés are set up and the furniture they use will be important considerations, and so the standard Conditions proposed may be amended as considered necessary in specific cases to ensure that the look of a given pavement café fits in with the historic character surrounding it. In relation to how the historic character has shaped the highways in the town centre, two of the four main pedestrianised streets (Church Street and Burscough Street) are quite narrow due to the historic street pattern, and so while pavement cafés will still be allowed on those streets (and they are not affected by the market), the size of pavement cafés on those streets will necessarily be limited in order to maintain an accessible central carriageway down the centre of both those streets, for emergency access.
- 2.13 Thirdly, while the five pedestrianised streets of Ormskirk Town Centre (Aughton Street, Moor Street, Moorgate, Burscough Street and Church Street) are covered by Traffic Regulation Orders (TROs) which restrict access by vehicles, the TROs do allow access for deliveries between 7am and 10am, and 4pm and 7pm. Such access would clash with pavement cafés and create potentially unsafe situations where vehicles, pedestrians and outdoor seating would have to share the same space. As a result, officers are liaising with LCC colleagues on Temporary TROs for the pedestrianised streets to restrict vehicular access to 7am-10am only (when pavement cafés would not be operating). This would be managed through the new gates that have been put at the ends of Aughton Street, Church Street and Burscough Street, as those gates would only be open between 7am and 10am.
- 2.14 Businesses and residents on the pedestrianised streets will be consulted on this Temporary TRO, but given that most premises in the town centre have rear accesses, only those without a rear access will be affected, and even they will still be able to receive regular deliveries each day to their front door between 7am and 10am.

Non-Highway Land

- 2.15 In relation to non-highway land, a business wishing to create an outdoor seating area is required to apply for planning permission. This would involve a planning application fee and would take approximately eight weeks to be decided.
- 2.16 As such, this requirement prevents the introduction of outdoor seating on non-highway land (e.g. within a business' own property) as part of a quick and temporary solution to the challenges that the hospitality industry is facing post-lockdown, and this requirement cannot simply be waived or suspended. However, local planning authorities can choose not to take enforcement action against those businesses who set up outdoor tables and seating without permission. In essence, this is what the latest government guidance is encouraging, although local planning authorities should always consider enforcement action in any specific situation where the use is causing a significant nuisance to neighbouring uses.
- 2.17 Therefore, it is recommended that the Council does not seek to take enforcement action against businesses establishing outdoor seating areas on non-highway land without planning permission while businesses are recovering from the lockdown (and any subsequent lockdown that may be needed due to a "second wave" of the COVID-19 pandemic), so long as those seating areas do not restrict safe pedestrian or vehicular access on an adopted highway, public right of way or any other established public footpath/cyclepath, or cause significant harm to the amenity of neighbouring uses. It is envisaged that this decision to not take enforcement action be in place until 30 September 2021 on the assumption that COVID-related challenges (certainly economically) will continue beyond this calendar year.

Outdoor seating on Council-owned land

- 2.18 The Council will consider any requests for outdoor seating on land within its ownership and, where appropriate, will reach agreements for those requests with terms which are similar to those proposed for temporary pavement café licences on highway land.

3.0 ALTERNATIVES CONSIDERED

- 3.1 Given the assent of the Business and Planning Act 2020, the Council are required to implement a temporary pavement licensing process, and so there is no reasonable alternative that involves not having a process or utilising the existing planning permission option, although the Council could choose to have a very limited process that simply allows applications to be given deemed consent by the absence of a decision after 14 days, but this would give the Council no control on the quality or location of the pavement cafés while still requiring the Council to publish all applications and consult.
- 3.2 At a more nuanced level, the alternatives to the proposal lie in precisely how the Council manages the arrangements for pavement cafés on highway land, particularly on the pedestrianised streets of Ormskirk Town Centre, i.e. where they are allowed to happen, what times they can operate, what furniture is used, etc. To a degree, this will depend on the particular circumstances and location of the business seeking an outdoor seating area, but the proposal outlined in

section 2 (and the Policy, Conditions and indicative plans provided at Appendices A, B and F) of this report sets out how the Council envisage location and circumstances guiding how any given business is catered for.

- 3.3 In relation to non-highway land, the alternative to the proposal is to take all expedient enforcement action where a business introduces an outdoor seating area on their own / other private land without planning permission, but it is considered that the Council's proposed approach to dealing with such cases while COVID19 restrictions are still in place would be more reasonable given the circumstances.

4.0 SUSTAINABILITY IMPLICATIONS

- 4.1 The proposal outlined in this report will have positive sustainability implications in that:

- Economically, they will help hospitality businesses to viably continue providing a service during the recovery from lockdown;
- Socially, they will enable hospitality businesses to operate in a more socially-distanced manner; and
- Environmentally, they will help create an improved environment in Ormskirk Town Centre for visitors (which will also have an economic benefit).

5.0 FINANCIAL AND RESOURCE IMPLICATIONS

- 5.1 The Act allows local authorities to charge up to £100 for a Temporary Pavement Licence application, but it is considered that this Council just make the application process free for the time-being, in order to help businesses that are already struggling financially due to the impact of the lockdown and COVID19. As such, there will be an impact on the resources of the Council, as implementing and administrating a process such as this does require officer resource, but after an initial flurry of anticipated applications (and the work involved in establishing the administrative process), it is anticipated that there will be very few applications for a temporary café licence going forward, and so financial and resource implications will be limited after that initial flurry of work.

- 5.2 However, it should be noted that the decision to not charge a fee may leave the Council open to criticism for incurring additional cost and not taking the opportunity to bring in the income allowed by the legislation to help cover those costs at a time when the Council is under financial pressure due to the impact of COVID19 (and the Council's efforts to help West Lancashire recover from the effects of the pandemic).

6.0 RISK ASSESSMENT

- 6.1 There are two key risks associated with this decision. Firstly, in relation to the perception or image of the Council, this decision could be seen by some as having a negative effect on Ormskirk Town Centre or other locations where

hospitality businesses wish to create outdoor seating areas. This is because it will involve change to the physical environment (albeit a temporary one) and how people use the public realm in their town centres and potentially in other locations. It could also be perceived as negative because it involves giving greater flexibility to businesses coupled with reduced enforcement of current planning legislation (for this temporary period).

- 6.2 However, the image and perception of the Council would also be tarnished if the Council did nothing to support the hospitality sector as it seeks to recover following the lockdown, and it is arguable that this would be a greater risk as it may discourage businesses from setting up / continuing in West Lancashire and affect visitor numbers to the Borough.

7.0 HEALTH AND WELLBEING IMPLICATIONS

- 7.1 The primary health and wellbeing implication of this decision relates to the fact that it is seeking to enable a more socially-distanced service from the hospitality sector and so reduce the risk associated with transmitting COVID-19.

8.0 EQUALITY IMPACT ASSESSMENT

- 8.1 There is a direct impact on members of the public, employees, elected members and / or stakeholders, therefore an Equality Impact Assessment is required. A formal equality impact assessment is attached as an Appendix to this report, the results of which have been taken into account in the Recommendations contained within this report

9.0 BACKGROUND DOCUMENTS

- 9.1 There are no background documents (as defined in Section 100D(5) of the Local Government Act 1972) to this Report.

Decision taken by:

Name	Title	Signature	Date
Heidi McDougall	Corporate Director of Place & Community		

In consultation with:

Name	Title	Signature	Date
Cllr Ian Moran	Leader, and Portfolio Holder for Economic Regeneration		

Cllr David Evans	Portfolio Holder for Planning		
Cllr Terry Aldridge	Mayor, and Chair of the Council		

NOTES

(Executive Decisions)

- 1. ANY CONFLICT OF INTEREST DECLARED BY THE PORTFOLIO HOLDER (Only required where decisions taken in consultation with):**

None

(Executive Decisions)

- 2. IF CONFLICT OF INTEREST EXISTS, DETAILS OF DISPENSATION GRANTED BY THE HEAD OF THE PAID SERVICE:**

N/A

('Other Decisions')

- 3. THE NAMES OF ANY COUNCILLOR WHO HAS DECLARED A CONFLICT OF INTEREST IN RELATION TO THE DECISION**

None

- 3. FOR FURTHER INFORMATION PLEASE CONTACT:**

Contact Officer: Peter Richards
Directorate & Service: Growth and Development
Telephone No: 01695 585046
Email Address: peter.richards@westlancs.gov.uk

Appendices

Appendix A – Policy for Temporary Pavement Licences

Appendix B – Conditions for Temporary Pavement Licences

Appendix C – Application Form for Temporary Pavement Licence

Appendix D – Notice for display on premises related to Temporary Pavement Licence application

Appendix E – Standard template for a Temporary Pavement Licence

Appendix F – indicative plans of where outdoor seating would be permitted in Ormskirk Town Centre

Appendix G – Equality Impact Assessment