



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

**Date of Decision: 15/09/2020**

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

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**TITLE: Amendments to Conditions for Temporary Pavement Café Licences in  
West Lancashire**

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**DECISION:**

- i) That the standard conditions applied to Temporary Pavement Café Licences be amended as per the document at Appendix A, to amend condition 12 related to hours of operation of pavement cafés and condition 30.
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**AUTHORITY:**

Record of Decision: Temporary Pavement Café Licences in West Lancashire  
Issue Date 24.07.20

- 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.

**REASONS FOR DECISION**

**As set out below**

Wards affected: Borough-wide

**1.0 BACKGROUND & CURRENT POSITION**

- 1.1 Following the launch of the Temporary Pavement Café Licence (TPCL) application process at the end of July, feedback has been received from businesses that condition 12 of the standard conditions is too strict in relation to the hours of operation allowed under a TPCL. Condition 12, as set out in the original set of standard conditions for TPCL, reads:

12. The Pavement Café Licence shall only operate between the hours of 10.00 and 22.00 in a mixed residential area and between 10.00 and 23.00 in all other areas.
- 1.2 The concerns raised relate to two aspects of the hours of operation. Firstly, many establishments with alcohol licences operate beyond 11pm within their premises, and they have raised concerns that restricting the operation of a pavement café associated with their business is not practical when their premises is open beyond 11pm. Their concerns focus on the challenge of enforcing such a policy for the business owners given that, during this time of restriction due to COVID-19, were they to close their pavement café at 11pm, they would not necessarily be able to accommodate the additional customers inside their premises, and neither would other premises still open in the vicinity.
- 1.3 Similarly, the requirement to take in their tables and chairs at 11pm would be unworkable because the businesses store the tables and chairs inside their premises, which would still be open for business at that time.
- 1.4 Secondly, other businesses with pavement cafés (e.g. coffee shops and cafés) open quite early in the morning and so would face the same difficulty with having tables and chairs stored in their premises and not being able to put them out until 10am.

## **2.0 ISSUES & PROPOSALS**

- 2.1 The issues raised above have all been raised by businesses within Ormskirk Town Centre, but could equally apply to businesses elsewhere, although there are some constraints that businesses located on the pedestrianised streets of Ormskirk Town Centre face that businesses elsewhere would not, and visa versa. As such, the Council's approach to hours of operation for pavement cafés needs to be able to be flexible to different contexts.
- 2.2 In relation to the suggestion that hours of operation should be extended beyond 11pm, the main issue is related to any noise that the pavement cafés may generate and how this would impact other nearby uses, in particular residential uses. As such, in primarily residential areas the stricter hours of operation involving pavement cafés being limited to 10pm is appropriate and should be retained.
- 2.3 However, in areas that are primarily non-residential (e.g. in town centres), the issue is less clear-cut, with residents choosing to live in (for example) a town centre environment and so aware of the fact that they may be disturbed by noise in the night-time because of the environment they live in (for example, when bars and clubs close in the early hours of the morning and customers leave the premises). However, that is not to say that such residents do not still have rights to expect not to be disturbed regularly in the early hours of the morning, and the potential for continuous noise generated from a pavement café is somewhat different from the occasional noise generated as customers leave a premises at closing time.

- 2.4 As such, an appropriate balance needs to be struck between enabling the businesses to operate and still serve as many customers as pre-COVID despite the COVID-related restrictions inside their premises by having outdoor seating and the amenity of nearby residents. Considering that TPCLs are only temporary (until the end of September 2021), and the relatively small number of bars with premises licences for serving alcohol beyond 11pm in the borough's town centres, it is considered that extending the hours of operation of pavement cafés after 11pm for those businesses with an existing premises licences for serving alcohol beyond 11pm in town centres and other areas not primarily residential in nature is acceptable. However, this should be accompanied by additional wording for condition 30 for TPCL to ensure that licence holders ensure that noise is kept to minimum after 10pm.
- 2.5 With regard the suggestion that the hours of operation for a TPCL should start earlier than 10am, in many locations this would be acceptable, as the primary constraint would be ensuring the safe movement of vehicles, pedestrians and other road users around the TPCL, and this would be no different before 10am compared to after 10am.
- 2.6 However, within the pedestrianised area of Ormskirk Town Centre specifically, the Traffic Regulation Orders allow access by vehicles between 7am and 10am for deliveries to the premises in the town centre. While many businesses in the town centre do have rear access for deliveries, not all do, and there is also the market on a Thursday and Saturday, when access is required by traders in the morning. As such, this access needs to be maintained, and the TPCLs that would be allowed after 10am in the town centre would not always be appropriate or safe before 10am, especially on the narrower streets of Church Street and Burscough Street.
- 2.7 As a result, while an earlier start time for TPCLs is generally acceptable, and this should be reflected in the standard conditions, there will be occasions where a TPCL needs to require a later start time to reflect the highway safety issues in a particular environment, such as on the narrower streets in Ormskirk town centre.
- 2.8 Based on the above, it is recommended that conditions 12 and 30 of the standard conditions for TPCL be amended as follows:
  - 12a. In primarily residential areas, the Pavement Café Licence shall only operate between the hours of 07.00 and 22.00.
  - 12b. In primarily non-residential areas, the Pavement Café Licence shall only operate between the hours of 07.00 and 23.00, unless the premises has a pre-existing License under the Licensing Act, in which case the hours of operation relating to that Licence shall also apply to the Pavement Café Licence.
  30. The license holder will be responsible for the conduct of themselves, their staff and customers. They must not create a nuisance or annoyance to users of the highway or owners/occupants of other premises in the locality. The licence holder is responsible for keeping noise to a minimum in order to not disturb nearby residents, particularly when trading beyond 22:00. The licence holder must also ensure that the operator of the

premises continues to discharge their responsibilities in relation to any pre-existing license under the Licensing Act, as the Pavement Café Licence does not replace those responsibilities.

- 2.9 Lancashire County Council, as highways authority and Lancashire Constabulary have been consulted on the above proposed changes to the conditions but did not provide any feedback.

### **3.0 ALTERNATIVES CONSIDERED**

- 3.1 The alternative to the above proposal would be to maintain the existing condition 12 and 30 for TPCL or propose other operating hours for TPCL. Given the challenge businesses would face if operating hours in primarily non-residential areas were restricted to 11pm, it is considered appropriate to extend the operating hours to reflect the operating hours of the premises themselves for the temporary period in which the TPCL would apply. It is also appropriate to bring forward the operating hours to 7am for TPCL in general, and only issue a more restrictive condition where a TPCL would cause an unacceptable highways safety risk if it were operational earlier in the morning.

### **4.0 SUSTAINABILITY IMPLICATIONS**

- 4.1 The proposals outlined in this report will have positive sustainability implications in that they will help hospitality businesses to viably continue providing a service during the recovery from lockdown to operate in a more socially-distanced manner.

### **5.0 FINANCIAL AND RESOURCE IMPLICATIONS**

- 5.1 There are no financial and resource implications for the Council associated with this decision.

### **6.0 RISK ASSESSMENT**

- 6.1 The risks associated with this decision reflect the need to try and balance two opposing impacts: that of the viability of hospitality businesses at this challenging time versus the amenity of nearby residents and / or highway safety. Highway safety should not be compromised and so, in a few selected instances in Ormskirk Town Centre, hospitality businesses will have to be restricted by not allowing TPCL to operate before 10am. However, in relation to the impact on residential amenity, in primarily non-residential locations (e.g. town centres) allowing TPCL to operate beyond 10pm will not cause significant harm if the TPCL are managed appropriately, especially given how few businesses will actually seek to operate a TPCL beyond 10pm.
- 6.2 As such, while the proposal does risk complaints being received by the Council in relation to the operation of TPCL beyond 10pm, the risk to hospitality business viability of not allowing the change to operating hours is greater.

## 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: N/A

Name	Title	Signature	Date

### 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:**

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**Appendices**

Appendix A – Updated Standard Conditions for Temporary Pavement Café Licences

Appendix B – Equality Impact Assessment