



Northern Ireland
Assembly

Committee for Social Development

OFFICIAL REPORT (Hansard)

Licensing of Pavement Cafés Bill:
Northern Ireland Local Government
Association, Belfast City Council, Institute of
Licensing and Licensing Forum

10 October 2013

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Members present for all or part of the proceedings:

Mr Alex Maskey (Chairperson)
Mr Jim Allister
Ms Paula Bradley
Mr Gregory Campbell
Mr Trevor Clarke
Mr Michael Copeland
Mr Stewart Dickson
Mr Fra McCann

Witnesses:

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| Mr Trevor Martin | Building Control, Belfast City Council |
| Mr James Cunningham | Institute of Licensing |
| Mr Stephen Hewitt | Licensing Forum |
| Mr Derek McCallan | Northern Ireland Local Government Association |

The Chairperson: I formally welcome Trevor Martin. How are you, Trevor? Long time, no see. I also welcome Derek McCallan, James Cunningham and Stephen Hewitt. You are very welcome to the Committee again, gentlemen. I apologise if you had to wait in the corridor while the Committee was in closed session. I leave it to you to make the presentation.

Mr Derek McCallan (Northern Ireland Local Government Association): Thank you, Chair, for your welcome. I realise that, like so many people, you are time-poor, so we will be as compelling but as technical as possible. The representative body for local government is the Northern Ireland Local Government Association. Because of a flight delay and a business contract worth quite a lot of money, the political members who were hoping to be here were not able to come, so you will have to do with the apolitical representatives on this occasion.

Again, renewed thanks and we are pleased to have an opportunity to meet all members on a shared basis because this information was drawn from all councils, and we were requested to make this joint presentation. The officers represent different professional officer groups. Trevor is head of building control at Belfast City Council, James represents the Institute of Licensing, and Stephen represents the Local Government Licensing Forum.

As a sector, we have voiced concerns for several years about how the development of a café culture is being curtailed by the current legislative requirements, so we are appreciative of the proportionate and reasoned approach that Roads Service has taken to this issue. At times, it is important to commend work that is done as opposed to creating a wish list of negativity.

Therefore, we are supportive of the introduction of legislation that enables and regulates pavement cafés. We are keen to work with the Committee to ensure that the Bill is implementable as well as robust. We are also keen to work with the Department to develop a robust working protocol. This is another good example of working collaboratively and joining things up. If this is consistent with, for example, how we approach in councils entertainments licensing, you will not have homogeneity but you will have consistency in enforcement and economic promotion.

We welcome the approach; it favours approval and we favour approval. We would like to limit the burdens on businesses. However, we also wish to ensure that councils can control effectively those traders who do not provide high-quality, safe and appropriate facilities because enforcement and promotion are one and the same in importance.

We want town centres, as do you and every sane person in this country, to be vibrant, well managed, attractive to visitors and tourists, contributing to the general well-being of communities, and to have the disabled and visually impaired as equal partners. That is the enforcement side.

To ensure that that is possible, we have a number of comments on the Bill. I will ask James to make a few points, and he will try to make a technical issue as compelling as possible.

The Chairperson: Is "sane person" a technical term?

Mr McCallan: Absolutely. *[Laughter.]*

The Chairperson: OK, thank you, Derek.

Mr James Cunningham (Institute of Licensing): Chairman and members of the Committee for Social Development, I thank you for the invitation to provide oral evidence. Although I represent the Institute of Licensing, which is the professional body for licensing practitioners throughout the United Kingdom, I am, with the agreement of my colleagues, presenting for all of us. This response was drafted and agreed by each of us on behalf of our associated bodies. In drafting the response, we consulted colleagues in Great Britain and the Republic of Ireland on how they license pavement cafés, and sought advice regarding issues that they have experienced.

There is a lack of consistency across the various jurisdictions in these islands on what legislation is used to license pavement cafés because there is no national legislation. We commend the Department and the Committee for introducing regional legislation, as it encourages consistency.

The Chairperson: Sorry to interrupt you, James, but I remind members that speaking notes are in their tabled items. I should have mentioned that earlier.

Mr Cunningham: First, I will deal with the definition of a pavement café in clause 1(1). The Bill defines a pavement café as a business involving the supply of food or drink in or from premises that place furniture in a public area for use by customers. The intention is that we will have al fresco dining and drinking outside cafés and bars, which is welcomed. However, from our interpretation of the wording of the proposed legislation, a consequence will be that any premises providing any form of food or drink, even from a vending machine, can apply. That could mean that a taxi depot, a bookmakers or an amusement arcade could apply, but I do not believe that that is the intention of the legislation, and that needs to be clarified.

Clause 1(2) deals with public and private spaces. The current definition of a space to be licensed under the proposed legislation is a public area. We believe that that definition will cause problems for regulators and could even disenfranchise some café and bar owners. For example, in many town and village centres, especially where old houses have been converted to shops and cafés, the existing gardens at the front have been removed and paved over and effectively have become the pavement over which the public transverses freely. There is therefore, to the public, and often the owner, no distinction in ownership or usage of the land.

There is a distinction in the legislation, however, between a private area, ie in the ownership of the building, which is not licensable, and a public area under the control of a statutory agency, such as DRD Roads Service, which is licensable. The legislation as it stands may result in a district council licensing some, but not all, premises on the same stretch of road where tables and chairs are placed on the footway depending on whether the portion of land is private or public. That means that we will be exercising controls on licensed pavement cafés in a public area while premises in a similar

location, but on private land, may fall outside the scope of those controls. That will lead to confusion and claims of unfairness for those affected, and will not foster consistency, which we know the café owners and federations that represent them want.

The supply and consumption of alcohol, the conduct of patrons and smoking are dealt with in clause 29. Conversely, that private/public land distinction will work in the opposite way. If a café or bar can be licensed as premises with a liquor licence and a pavement café licence, it can allow patrons to consume alcohol without breaching the alcohol by-laws. If similar premises cannot be licensed as a pavement café because of the land issue, it will need to make an application to the County Court for the area outside its premises to be included in its liquor licence to supply and consume alcohol, as it will not be exempt from complying with the alcohol by-laws through the possession of a pavement café licence. That could lead to a two-tiered licensing system, with a cost differential associated with the two processes for the premises.

We suggest that obtaining a pavement café licence may be substantially less onerous than going to the County Court, but that option is not available to premises with private land. In order to rectify that, we suggest that the Committee examine the definition of public land contained in the street trading legislation for Northern Ireland. That definition includes a road, pavement or any other area not within permanently enclosed premises, within 10 metres of a road or footway, to which the public has access without payment.

On the design, layout, style and quality of a café, we believe that the Bill will allow councils a degree of flexibility in determining applications where tables and chairs cannot be placed immediately outside a premise. However, we are concerned that that broad flexibility may lead to differing standards and cause future problems of parity. It has also been suggested that councils physically mark the location of the pavement café, such as with stainless steel studs or by marking the ground with paint. There is no such power in this legislation. That problem also arises with the Street Trading Act, as there is an inability to mark pitches, and that has proved a problem for both traders and council officers.

Disability access issues are a major concern for all parties, not only in relation to disability access in the street café area itself, but also in relation to how the café area has now created restrictions on the pavement width and how that impacts with other possible obstacles in the area, such as street lighting and bins, especially for those who are partially sighted. The Committee could include as a statutory consultee a group such as Disability Action, which may be best placed to advise councils on the requirements needed for each application, to try to ensure compliance with the Disability Discrimination Act. However, that would impose significant resource requirements on those organisations.

Administration and fees are dealt with in clause 12. There is a concern that, although the Bill allows a council to charge fees for a licence application, the actual cost of administering the scheme will far exceed what a council will be comfortable with charging already struggling businesses in the area. We suspect that the difference will come via rates or from other sources, such as a reduction in service or other areas of council work, to fund that new function. To assist both councils and business, we urge the Committee to consider some form of funding for councils or grant funding for applicants to cover the cost full or to provide assistance to keep costs to a minimum without affecting rates or a reduction in council services. We have noted that some councils have asked for fees to be set centrally. Although that may allow for a degree of consistency throughout the Province, it also restricts the council from setting charges to suit their own needs. I draw the Committee's attention to a recent landmark ruling from the Court of Appeal in May 2013 in the case of Hemming versus Westminster City Council, which looked at how councils set fees and that councils cannot charge more than the authorisation procedures themselves.

Clause 4(2) deals with limited grounds for refusal of a licence. As we have already stated in our written submission to the Committee, we are concerned that the grounds for refusal do not cover enough eventualities and, as such, weaken the options for councils to bring about effective control, which may prove problematic in the longer term. At present, there are no grounds to refuse where the activity will cause environmental problems or detract from the amenities of the adjacent retailers or occupiers; for example, if there are smells from food, alcohol or smoke close to a residential property or problems with noise from customers who cause nuisance and annoyance. There are no grounds to refuse if tables and chairs, et cetera, are not suitable for their use or where the overall design is an eyesore and inappropriate for the area.

Clauses 14 and 15 deal with enforcement. In order to ensure that the Bill complies with the better regulation principles, there needs to be more enforcement sanctions to cover minor infringements. At

present, apart from revocation and suspension for breach of licence conditions, which are both quite draconian measures, and the power to remove tables and chairs, councils have no powers. We recommend that consideration be given to the introduction of a moderate fixed-penalty scheme as a cost-effective means of enforcing that piece of legislation for both councils and licensees and to include additional offences for non-compliance with licence conditions. For example, a fixed penalty would be used when a number of warnings had already been given and there was still no compliance instead of suspending a licence for minor licence breaches, such as when a pavement café has not displayed its licence, the furniture has not been removed at the end of trade or the licensee is spreading themselves out and using more space than is licensed for.

With regard to commencement of the legislation, I know that it has been suggested that the legislation may be implemented fully by the summer or autumn of 2014. When the Department is considering the commencement date, consideration should be given to a transitional period for implementation to allow councils an opportunity to consider applications from already established pavement cafés. Otherwise, councils may need to deal with a large number of applications in a short period, which will place a significant administrative and resource burden on members and officers. As I understand it, RPA is imminent in 2015. With shadow councils in operation in 2014 with a raft of other important issues to deal with, pavement café licensing may not be prominent on the agenda, resulting in businesses being left feeling frustrated with the speed at which their application is dealt with.

Finally, Chairman, model terms and conditions for technical and managerial provisions are dealt with in clause 27. In the Bill, there is a reference to making provisions by regulation. As I have stated a number of times throughout the presentation, we firmly believe and recommend to the Committee that consideration be given to introducing some form of model terms and conditions from a technical and managerial perspective that would help to ensure consistency of approach and to provide clear guidance to councils and industry on the intent of the legislation. The Committee advised that similar provisions exist under the Local Government (Miscellaneous Provisions) (Northern Ireland) Order 1985, which enables councils to issue an entertainments licence subject to such terms, conditions and restrictions as may be determined. However, in doing so, they have to have regard to the model terms, conditions and restrictions that are published by the Department. A similar set of model terms could be drawn up by a working group that included councils, DRD's Roads Service, the PSNI, Pubs of Ulster, town and city centre management, Disability Action and other such groups. It could be drawn up and agreed quickly, need not be overly lengthy, but could be extremely beneficial to all parties. That would operate both as sword and shield for all concerned as it sets out clearly the requirements to run and operate an establishment that fits into the intention of the legislation. It would also ensure consistency across all councils, a level playing field for applicants and ensure that everyone's requirements are built into the agreed document. I know that it has been invaluable in the administration of entertainments licences.

Chairman, thank you once more for the opportunity to be heard.

The Chairperson: James, thank you very much for your extensive presentation. The broad approach that we are getting from you is that you support the legislation, but you draw attention to what you consider might be issues of concern. Trevor, last week you raised an issue.

Mr Clarke: Yes. I think that James is saying the same thing today.

The Chairperson: Yes, I think that he mentioned that.

Mr F McCann: Thanks for your presentation. Some of us on Belfast City Council were always arguing that we needed to change the way we were doing things, especially when it came to having a more European approach to pavement cafés, given the increase in tourism. Naively, probably, we just saw it as a straightforward movement. It is good to be steadied, especially by experts such as yourselves. It is about trying to find a happy medium that allows us to provide the pavement cafés but which has the regulations to allow us to deal with any given situation.

Mr Allister: You have drawn attention to a number of issues, the first of which is a possible problem with the qualification that if you provide any form of food or drink you are entitled to establish a pavement café. You are suggesting that even a vending machine would qualify you to do so. If you are right about that, how would you suggest tackling it? How do you solve that problem?

Mr Trevor Martin (Building Control, Belfast City Council): We thought of that, Mr Allister. We know what a pavement café looks like; everyone has it in their head that it is a continental thing. That

is what we are striving to achieve, and we want to make sure that that is where we end up, once we start to police it.

We thought about wording the qualification so that if the venue is principally there for the provision of food and drink that would exclude the likes of a bookmaker's shop because it is not principally there for the provision of food and drink. The difficulty with that is that if a museum with a small café wanted to have a pavement café, that would fall outside the scope of the legislation. We also thought about things such as the premises having to have a food hygiene certificate issued by the local council. That, again, might ring-fence the sort of premises that we are looking at.

However, the wording needs to be such that, when we bring it in, the qualifying premises that can apply are true licensed premises or cafés, so that we do not get people coming in on the periphery, which is not what was intended. The wording should reflect that the significant reason why the premises exist is for the provision of food and drink.

Mr Allister: Well, would the stipulation about having a food hygiene certificate catch all genuine food providers?

Mr Martin: It might, but it may also let other people in who may apply for a food hygiene certificate. The significant reason for the premises is the best qualification. However, our difficulty is that we thought that that was the answer, but when we were talking about it in the café in this very building, we realised that if this building applied for a pavement café licence we would have to think about granting it because this building is not principally for the provision of food. Yet, it may be something that the café here might want. It is about trying to get a form of words that captures the sort of buildings that we want and excludes those that we do not want.

Mr Allister: Speaking of ring-fencing, what about the issue, particularly bearing in mind the needs of visually impaired people, of physical ring-fencing out on the pavement? In many European situations, the café is surrounded by a low screen that creates a physical barrier, whereas some of the photographs that have been supplied to us by people from whom we are to hear later show a very higgledy-piggledy approach to pavement cafés elsewhere. Do you have a view on that, Mr Martin?

Mr Martin: Yes. Our view — James expressed it at the end of his presentation — is that we want to ensure that the legislation does not impose a burden on licensed traders or cafés because they are already under serious pressure. However, we also want true pavement cafés. One of the ways in which we think we can do that — this happens because I also administer entertainment licensing — is through what are called model terms and conditions, which were drawn up when the legislation was introduced. They were drawn up by the trade bodies that were involved, by environmental health, by Building Control and DRD. You could establish technical requirements that a pavement café would have to meet, including that a pavement café would have some form of screening that would be set out in such a way as to protect people who were visually impaired. When we were thinking about this, I got in touch with Disability Action because disability is a major issue for anyone who has been down a street where these pavement cafés exist. Disability Action is keen on that idea, because you could bring it in when drawing up those conditions so that it could outline the requirements that need to be built into the legislation to keep its community safe.

Therefore, someone who was applying for pavement café licence would have to meet technical rules and provisions for a council to license them, and we would know that every council across the Province was exercising the same rules. I also assure people with disabilities that a licence would not be granted unless it met those conditions, and, if that worked, they would not have to be consulted on every application. It would mean that the conditions that they had agreed to were put into pavement café licences at the outset.

Mr Allister: Finally, are there any measures that could or should be taken to prevent the pavement café legislation simply becoming another way of legalising street drinking late at night?

Mr Martin: It is up to the council how it licenses it and what conditions it puts on licensing; that is why James touched on the distinction between public and private land. There are two sets of conditions that you can put on premises: the technical conditions of how they are laid out, and the managerial conditions thereafter. The managerial conditions, if drawn up, could include measures to do that. We got the intention from the Department, which wanted light-touch regulation, and we want light-touch enforcement. Light-touch enforcement will keep the cost of administration down, but to have it you have to set out clearly at the outset when people apply exactly what they are applying for and the

conditions and restrictions on them. We will have to take that into consideration when we say clearly what the days and hours of use are. As James said, if someone were to infringe that, there would be some immediate measure that we could take such as a fixed-penalty notice to bring them back into line.

Mr Allister: The common perception of a pavement café is that it is very nice to sit on a sunny afternoon and have a cup of coffee, but if the same legislation means that, at 1.00 am on extended licensing, you can have people with all the attendant noise and drinking in the street, it may not be as attractive to local residents.

Mr Martin: You are absolutely right. We all know what a pavement café should look like, and that is the idea that we have in our head. We need to ensure that we have a mechanism whereby we get conditions down at the very outset before the legislation is drafted or introduced so that people know exactly what it is and, more importantly, what it is not.

Mr Cunningham: Mr Allister, the pavement café is on public land, and the council will have a control mechanism. We will be able to say that pavement cafés have to be finished at 7.00 pm, but, on our interpretation of how the Bill stands, if the pavement café is on private land we will not have that control mechanism.

Mr Allister: I thought that your example of the legislation on street trading was a good one to follow.

Mr Cunningham: The City of Westminster in London uses that to regulate its pavement cafés. It gives the council some control into private land so that it is not encroaching into a beer garden at the back of the premises but is dealing with the frontage.

Mr Clarke: I thought that I was the only one who was interpreting it that way, and I am glad that Jim shares my view. Jim is focusing on the situation late at night, and that is one aspect of it. I am also concerned because my reading of the wording is that it talks about the exemption from by-laws on alcohol in public places. The explanation that I got last week, which I am not entirely satisfied with, is that it is still up to the council to decide. If there is an exemption to a council by-law, I cannot see how a council can refuse to grant the licence, if you follow my point. If I own a public house and decide that I want to extend it to a café in an area that is designated as having no on-street drinking, the way that it is worded by the Department at the moment actually allows an exemption from that. I do not see how the council could refuse it based on the council by-law, because it has allowed for the exemption in the first instance. I do not know what your opinion is on that, but my reading is that the public house has been protected against the by-law.

Mr Cunningham: Yes, that is correct. That area as marked on a map will become exempt from the by-law.

Mr Clarke: That is my concern.

Mr Stephen Hewitt (Licensing Forum): I think that there is provision in the Bill to remove that exemption if there is a problem with disturbance. You can say that you are not allowed to have alcohol in that café area.

Mr Clarke: The problem with that is that it only comes after the problem.

Mr Hewitt: That is correct.

Mr Clarke: So someone will have suffered as a consequence of — in my opinion — a bad piece of legislation that allowed it in the first instance.

Mr Dickson: I have to leave the Committee shortly, but I want to address the issue of smoking. As someone who is rabidly anti-smoking, running the gauntlet of smokers at our hospital doors is offensive enough, and walking past pavement cafes where people sit outside and smoke is offensive. In fact, I would have thought that, for many businesses, it deters people from either sitting outside or running the gauntlet of smoke to get inside the premises to a smoke-free atmosphere. Have you any sense of how smoking might be dealt with in the legislation?

Mr Cunningham: As part of our research we looked across all these islands. In England, a number of councils, through their licence conditions, have said that you are not allowed to smoke in that area. In the South, they have gone down the line that it is an extension of the premises and you are not allowed to smoke in those areas. The flip side of that argument is that the pubs are saying that people now have to go outside to smoke and it is going to be very difficult to balance the decision for the trade as well as for the public. How that is managed is a concern for us, along with what we refer to as mass vertical drinking, when the area is no longer a pavement café; it becomes an extension. It is about putting those control mechanisms in, as we have said on a number of occasions, and those model terms and conditions. If we get those agreed with industry, they are the best mechanisms to deal with that, because it will be clear that that area has to have x number of tables and chairs and that, say, everybody has to be seated, or something along those lines. If that is agreed with all, nobody can say that you are targeting their part of the industry.

Mr Dickson: That is helpful. I am glad that there is recognition of that.

The Chairperson: Mass vertical drinking — is that people just —

Mr Allister: That is before they fall down. *[Laughter.]*

The Chairperson: That is another technical term.

Mr F McCann: Just on the question of street furniture, should designs for furniture be set to ensure uniformity or that it is presentable on the streets?

Mr Martin: I think that the answer is yes. The difficulty is what standard you set, but I think that there should be a standard, because if there is not, we will have complaints because one person will be providing quite nice furniture and the next person will be providing plastic chairs. You could have a situation where someone puts beer crates out and we sit on those. There should be some standard to make sure that it is what people expect it to be: a proper continental café-type culture. I am not quite sure how we set that standard. That is why I think that you should sit down with the industry to agree something that would be acceptable to councils but would not be an imposition. Without it, it would be open to the sort of situation that we do not want and we did not envisage.

Ms P Bradley: Thank you for your presentation. As someone who goes out in Belfast quite often, I know that we have these already in Belfast. They are all over the place in Belfast: in the city centre, on the Lisburn Road, at Botanic or wherever you go. I agree that we need legislation to look at all the issues that you have highlighted today. We also have them in place in bars in the city centre, where people go outside to stand and smoke and take a drink. Do we have any evidence through Belfast City Council that that has increased antisocial behaviour? Have there been any major complaints in relation to those areas outside pubs and restaurants?

Mr Martin: I am not aware that there have been major complaints about noise and nuisance. There have been complaints from pedestrians and Disability Action where these areas have infringed so far onto the pavement that people have difficulty getting past. I do entertainment licensing, and we have had complaints about people drinking outside bars. Although the introduction of the smoking legislation was very valuable on one side — as a non-smoker, I am very glad that it came in — it forced people to stand outside premises. We had a consequential rise in complaints from residents about noise on premises. It has settled down a bit where proper smoking shelters have been put in. In respect of entertainment licensing, we still get significant numbers of complaints about people smoking outside the premises as opposed to complaints about the music or the entertainment itself. The big issue that we have had, certainly in the city, is the blocking of pavements.

Ms P Bradley: As you state in your submission, many businesses — whether it is a cafe, a bar or whatever — own the part of the pavement in front of their premises, because it was once the garden of the house that was there. At my office in Glengormley, which I represent, I pay rent and rates for the area in front of my office. Can we dictate to people who are paying rates and rent for that area that they cannot use it because it is too close to the pavement or there is not enough room for people to walk by?

Mr Cunningham: We have made a suggestion to change the definition so that it includes private land; we used the example of street-trading legislation. As it stands, if you decided to put a stall outside your office, you will have to apply to the council for a street-trading licence — as silly as that sounds —

because, even though it is privately owned land, you are effectively on the pavement, where the public go up and down. That gives a control mechanism so that you do not end up with the owner of an apartment putting, say, a hot dog stall outside. It is not about the council wanting to regulate everything; it is about having a control mechanism so that other properties are not affected by an antisocial behaviour order, for example.

It is likewise with the licensing of pavement cafés. Most pavement cafés will probably be very nice. However, our concern is that you could end up with something outside your property, particularly at night, and say, "Flip me, I wish that somebody could do something about that", and the reply would be, "It is on privately owned land; it has nothing to do with you." Councils have no real control and you are relying on the police to deal with it. However, if we had a control mechanism, it can at least form part of the licence.

Ms P Bradley: I agree with most of what you have said to us today. As an ex-councillor, I agree with you that we will be putting something else onto councils to legislate for. Therefore, it needs to be tightened up. There needs to be uniformity across all councils so that there is no ambiguity from one council to another. Some of the points that you have made have been very interesting. Thank you.

Mr Cunningham: The Institute of Licensing represents members right across the Province, and the same thing was coming back across the Province. It is just not me saying that it is a problem in Belfast.

Mr McCallan: I want to pick up on what Ms Bradley said about this not being all about councils. It received cross-party Executive support and the support of independent members. Given such consensus, we would like to work with you to make it happen.

The Chairperson: I appreciate that, Derek. As you said, there has been a positive response overall, but there are some negative issues that we have to address. You have articulated those issues very well this morning. Some of them have been raised by members before, so we are aware of them.

Thank you very much for your support for the Committee's deliberations on this. We will no doubt have to return to this and have more significant discussions with you as we progress with the legislation. Derek, Stephen, Trevor and James, thank you very much for your presentation and patience this morning.