

Your Ref: DB

Our Ref:



12 September 2013

The Committee Clerk  
Room 410  
Parliament Buildings,  
Ballymiscaw,  
Stormont  
Belfast  
BT4 3XX

Dear Chairman

## LICENSING OF PAVEMENT CAFES BILL

Further to the Committee's request for comments on the Licensing of Pavements Bill I would like to take this opportunity to forward the comments of North Down Borough Council.

The Bill was generally welcomed and is considered a good response to deal with the growing problem of uncontrolled street furniture on our streets. Council would forward a few comments and concerns regarding the Bill.

### 1. Private v Public Land

In the Bill *"a public area" means a place in the open air to which the public has access, without payment, as of right and which is not in a market.*

On initial reading of the definition of 'a public area' in the Bill, it appears to be very broad and as such it may be argued that this cuts down on red tape and is to be welcomed if this minimises any burden on business. However, from an operational point of view the Council would like to raise the following points: -

The Council would welcome clarification as to the intention of the Bill with regard to privately owned land. Initial discussions with Department officials would appear to suggest that the Bill will not apply to any privately owned land. However, the definition of a public area within the legislation is a place in the open air "to which the public has access, without payment, as of right".

Within North Down there are some commercial premises which own the land in front of their property, albeit it is maintained by Roads Service as a public pavement. It

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would appear under the proposed definition of a public area that these premises would not be required to apply for a licence.

This may result in the Council licensing some, but not all, premises on the same stretch of road, where tables and chairs are placed on the footway, depending if the portion of land is in private or public ownership, which will mean two distinct enforcement authorities. If a pavement cafe licence is issued, the enforcing authority will be a council. However, if the premises do not require a pavement cafe licence then the enforcing authority will be the PSNI. This will be, in effect, two different licensing authorities and regimes regulating the same activity.

For some premises this will result in no control on design, layout or operating times in the pavement café area; this is particularly important where there have been problems with disorder. This will lead to confusion and claims of unfairness for those affected. Conversely, premises with a Pavement Café Licence can allow patrons to consume alcohol without them breaching the Alcohol Bye-Laws, whereas the premises that cannot be licensed because of the land issue will not be exempt from complying with the Alcohol Bye-Laws.

It is worth noting that in the Street Trading Act (NI) 2001, on which the Bill is modelled, there is a different definition of a public place. It is suggested that this definition should be considered as a more appropriate definition to adopt as it would deal with all of the above problems.

There is concern that if the licensing scheme does not regulate all pavement cafes then this will not support the creation of a vibrant daytime and evening economy for the general well-being of communities.

## **2. Location of Pavement Café Furniture**

It appears under the proposed Bill that an area licensed as a pavement cafe does not need to adjoin the applicant premises. In many ways, this a sensible approach, to allow councils a degree of flexibility as there may be premises that cannot place their furniture directly outside the frontage of their property.

However, we are concerned that this broad flexibility may also be exploited and cause future problems. We would request that consideration be given to how controls on limits could be placed on inappropriate competition from businesses which, for example, apply for a licence in areas adjacent to other establishments. It is also essential that guidance is provided on how competing applications for the same area should be dealt with.

For example, a public house could apply for a pavement café licence some distance away from its premises thus gaining an economic advantage over competing pub premises. It is doubtful whether this is the intent of the legislators but is a matter that should be addressed, together with guidance on completing applications, so as to provide clarity for councils and applicants alike.

## **3. Fees**

There is a concern that although the Bill allows the Council to charge fees for a Licence application, the actual cost of administering the scheme is likely to be high

(i) the trading is done in the course of a business involving the supply of food or drink to members of the public, or of a section of the public, which is carried on by the licence holder at the premises specified in the licence; and

(ii) the trading does not involve a contravention of the conditions of the licence.”.

The intention of the Licensing of Pavement Cafes Bill is to provide councils with the power to licence occupiers of suitable premises to place tables and chairs on the pavement to facilitate their customers. It would be a concern that this could allow pavement cafes to set up 'off the premises' barbecues, rotisseries, ice cream machines, drinks/food vending machines, coffee machines and other equipment for the sale of food and drink. This exemption could allow a café/bar to obtain a pavement café licence to effectively become a street trader.

It is considered that businesses licensed to operate an outdoor café should be required to prepare all food/drinks inside the main premises and not in the café area. If a trader wishes to sell from barbecues, ice cream machines and drinks/food vending machines or alcohol from a temporary bar they should still require a street trading licence with all of the appropriate considerations and checks.

In other jurisdictions where they licence pavement café's there remains a requirement to obtain a street trading licence.

Yours sincerely



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**Environmental Services**