

REPORT TO: LICENSING BOARD - 16TH FEBRUARY, 2006

REPORT ON: PROHIBITION OF SMOKING IN CERTAIN PREMISES (SCOTLAND) REGULATIONS 2006

REPORT BY: THE CLERK TO THE LICENSING BOARD

REPORT NO: 155-2006

1.0 PURPOSE OF REPORT

1.1 To formulate a policy on external drinking/smoking areas following the introduction of the above Regulations on 26th March, 2006.

2.0 RECOMMENDATIONS

2.1 That occasional licences for pavement cafes be restricted to the period March to October as at present.

2.2 The members instructions regarding any extension in the hours of operation are requested.

3.0 FINANCIAL IMPLICATIONS

3.1 None.

4.0 LOCAL AGENDA 21 IMPLICATIONS

4.1 The Controlled use of external areas will help to maintain a safe and clean environment for patrons and non-patrons alike.

5.0 EQUAL OPPORTUNITIES IMPLICATIONS

5.1 None.

6.0 BACKGROUND

6.1 Reference is made to Article III of the minute of meeting of the Licensing Board of 19th January, 2006 wherein a report on the operation of Pavement Cafes was requested.

7.0 CURRENT POSITION

7.1 26 premises have been assessed as suitable for permission to operate a Pavement Cafe. In addition a number of sites have also been assessed as unsuitable. The criteria and conditions for the grant of a Pavement Cafe are attached (Appendix I). The actual Licence granted is an occasional licence in terms of Section 33 of the Licensing (Scotland) Act 1976. This allows for an occasional licence to be granted in respect of an "occasion" taking place outwith the premises covered by the main licence.

7.2 Each licence is granted for a two week period and conditions are attached, the most notable of which is that the permission ceases at 8 pm.

7.3 As licences are only granted for two week periods any problems arising are short-lived and can be quickly resolved by refusal of further permissions.

7.4 None of the current premises have any canopies or awnings, outdoor heaters, fixed grilles or other features.

7.5 At the moment, occasional licences are granted from March to October on a fortnightly basis as outlined in Paragraph 4.2 above. This coincides with the "Summer in the City" series of events and this is regarded as the "occasion" for the purposes of Section 33 of the said 1976 Act. If occasional licenses are sought all year round, they would be outwith the period identified as the occasion. Any licensees who wished to have something more permanent than a two week grant would require to apply for provisional grant of a new licence. The Board would have no power to attach any conditions to such permanent licences and would have no control over the hours of operation when granted. Any noise or disturbance from these outside areas would potentially last until 11 pm or midnight if the premises had a regular extension.

8.0 INCREASE IN THE HOURS/PERIOD OF OPERATION

8.1 Should the Board decide to increase the hours of operation to 11.00 pm or midnight or extend the current summer period to all year there is likely to be an increase in noise related problems, litter problems and public order issues.

8.2 Noise problems are likely to be exacerbated by a reduction in background or white noise later in the evening and the increased use of the facility. The addition of patio type heaters would probably extend this potential nuisance to all year round and the noise factor would be exacerbated through encouraging all customers, not only smokers, to enjoy their drink outside.

Whilst this may well enhance the ambience of the City at certain times and in certain locations, there remains the potential for complaints of noise from residents who have not previously had to contend with such an issue.

8.3 There might be the possibility that cigarette smoke from groups regularly congregating in external drinking/smoking areas could infiltrate into residential or commercial properties, either naturally or aided by mechanical means. Therefore, the area to which the application applied should not be near/under opening windows., near air intake fans or directly in front of exit and entry doors.

8.4 The primary purpose of pavements is to allow pedestrians to walk in safety and accordingly it is not envisaged that ownership will be ceded to licensees on a permanent basis. The current practice of pavement cafes operating for short periods in the summer has not necessitated a formal Right to Use agreement between the Council and the Licensee.

8.5 Any extension to the current period of operation will however mean that such an agreement will need to be in place before any permissions could be granted.

8.6 Permanent structures on pavements such as railings or grilles should not be permitted as they could lead to obstructions and street sweeping problems.

8.7 Planning permission would be required for the installation of a canopy, shelter, barrier or any such similar structure.

9.0 VIEWS OF TAYSIDE POLICE

9.1 A letter dated 6 February 2006 from the Chief Constable is attached. (Appendix 2)

10.0 VIEWS OF THE LICENSED TRADE

10.1 There was no support from the trade members on the Licensing Forum for any change to the period over which occasional licences are currently granted for pavement cafes. However, it was suggested that the hours of operation should be extended beyond 8.00pm until 9.00pm or 10.00pm during the periods which it is still daylight at these hours.

11.0 CONCLUSIONS

11.1 Given the absence of any support for extending the period over which occasional licences are granted for pavement cafes, the status quo should remain, ie from March to October. This has worked well in practice and there have been few problems in terms of complaints about premises who have such licences.

11.2 Consideration may be given to extending the hours of operation beyond 8.00pm. Since the licences are granted for a two week period, any problems resulting from any such extended opening hours can be dealt with by restricting or even refusing future permissions. Tayside Police have indicated that they have no objection to a limited extension of hours in this way.

12.0 CONSULTATIONS

12.1 The Chief Executive, the Director of Planning and Transportation, the Head of Waste Management, the Head of Environmental Health and Trading Standards, the Liquor Licensing Consultative Forum and Tayside Police have been consulted.

13.0 BACKGROUND PAPERS

13.1 None.

14.0 Name Patricia McIlquham

Clerk to the Licensing Board

Date: 23rd January, 2006

APPENDIX 1**CONDITIONS**

1. To avoid public nuisance the licence shall cease at 8.00 pm each evening.
2. The Licensee shall ensure that an employee is supervising the Pavement Cafe area at all times.
3. The Licensee shall ensure that all litter associated with the cafe is cleared up promptly and in particular at the conclusion of the operating hours that the pavement area is cleared.
4. Only table service shall be allowed in these pavement cafes and that no persons should be standing whilst consuming alcohol.
5. Each application for an occasional licence shall be accompanied with a plan of the area within which alcohol is to be served and consumed and the said plan shall illustrate the table and chairs layout.
6. The area of the pavement cafe must be cordoned off using suitable materials.

Please note - The above conditions are in addition to those already in force on Public House, Restricted Hotel and Restaurant Licences.

CRITERIA FOR CONSIDERATION OF APPLICATION

1. If the pavement cafe is operational on more than 28 days in a 12 month period planning permission may be required. For information contact Mr McLeish (Telephone 433315).
2. Tables and chairs must be stored in such a manner so as not to impede any entrances to or exits from the building.
3. All furniture eg tables and chairs must be a minimum of 2 metres away from the kerbside.
4. The area of the pavement cafe must be cordoned off using suitable materials.
5. In terms of the Licensing (Scotland) Act, 1976 applications may only be considered from the holders of Public House, Restricted Hotel, Hotel and Restaurant Licences.

APPENDIX 2



TAYSIDE POLICE

TAYSIDE POLICE *Appendix 2*

John Vine QPM BA MSc FCIPD • Chief Constable

Our Ref: C.9.5.1/JH/BC/1A
 Your Ref:
 Date 6 February 2006

The Clerk to the Licensing Board
 Dundee City Council
 20 City Square
 DUNDEE
 DD1 3BY

Dear Clerk to the Licensing Board

PROHIBITION OF SMOKING IN CERTAIN PREMISES (SCOTLAND) REGULATIONS 2006

I refer to the above Regulations which come into force at 0600 hours on 26 March 2006 and would make the following comments in respect of their effect as regards pavement cafés.

The current position of controlling pavement cafés by means of an occasional licence granted under Section 33 of the Licensing (Scotland) Act 1976 appears to work well. It provides both clear guidelines for the licensee and a speedy means of resolving any problems that may occur.

The condition attached to the licence of closing the cafés at 8pm should continue. I would have grave concerns about extending the hours of the cafés to match the hours of operation of the licensed premise. I believe that to do so would create an increase in noise related problems as it is likely there would be an increased demand for the facility by those patrons who normally start their evenings at licensed premises later and would be tempted to remain outside. A combination of less background noise in the evenings and an inevitable increase in volume of those using the facility is likely to cause annoyance to residents.

There is good reason for the cafés to be in existence during the summer months as they coincide with other City events. I would not like to see this period extended into the autumn or winter months where the provision of heaters would be required and may cause obstruction to the footway.

Tayside Police and Dundee City Council have been working towards a safer evening economy and discussions have been ongoing for some time as to how best to take this forward. I think that proposals to provide outdoor smoking arrangements would sit contrary to the recommendations of the Evening Economy Working Group.

I submit this information for your consideration.

Yours faithfully

Chief Superintendent
 Divisional Commander

**CENTRAL DIVISION**

Police Headquarters • P.O. Box 59 • West Bell Street • Dundee • DD1 9JU
 Telephone 01382 223200 • Fax 01382 200449 • DX DD46 Dundee

a member of
**QUALITY
 SCOTLAND**

