

Pavement Licence Appeal

Final Decision-Maker	Licensing Sub Committee
Lead Head of Service	John Littlemore, Head of Housing and Community Services
Lead Officer and Report Author	Lorraine Neale
Classification	Non-exempt
Wards affected	High Street

Executive Summary

In line with our Pavement Licensing Policy an application for a Pavement Licence was refused because a site assessment did not meet the public safety requirements of our policy and a representation was received. Although there is no statutory appeal process for these applications, this applicant has been given the opportunity to state their case to Licensing Sub Committee.

Purpose of Report

Members are asked to consider and determine the appeal from Mr Roy Pereira against the refusal of a Pavement Licence for the area outside Wildwood Restaurant, 37 – 41 Earl Street, Maidstone, Kent, ME14 1PF.

This report makes the following recommendations to this Committee:

1. That Members give consideration to the application for a Pavement Licence by Mr Roy Pereira taking into account the consultation representation

Timetable

Meeting	Date
N/A	

Pavement Licence Appeal

1. CROSS-CUTTING ISSUES AND IMPLICATIONS

Issue	Implications	Sign-off
Impact on Corporate Priorities	<ul style="list-style-type: none"> <i>There is no impact on Corporate Objectives as the matter has been dealt with in accordance with our Pavement Licence policy</i> 	<i>Senior Licensing Officer</i>
Cross Cutting Objectives	<ul style="list-style-type: none"> <i>No implications have been identified</i> 	<i>Senior Licensing Officer</i>
Risk Management	<ul style="list-style-type: none"> <i>Risk Management issues are covered within the approach taken by Pavement Licence policy and the processing of this application has been in accordance with policy.</i> 	<i>[Senior Licensing Officer</i>
Financial	<ul style="list-style-type: none"> <i>No implications have been identified</i> 	<i>Senior Licensing Officer</i>
Staffing	<ul style="list-style-type: none"> <i>No implications have been identified</i> 	<i>Senior Licensing Officer</i>
Legal	<ul style="list-style-type: none"> <i>There is no statutory appeal process against a decision to refuse a pavement licence application. However the opportunity has been given to the applicant to mitigate against the reasons for refusal to Licensing Sub Committee whose decision will be final.</i> 	<i>Senior Licensing Officer</i>
Privacy and Data Protection	<ul style="list-style-type: none"> <i>No implications have been identified</i> 	<i>Senior Licensing Officer</i>
Equalities	<ul style="list-style-type: none"> <i>No implications have been identified</i> 	<i>Senior Licensing Officer</i>
Public Health	<ul style="list-style-type: none"> <i>No implications have been identified</i> 	<i>Senior Licensing Officer</i>
Crime and Disorder	<ul style="list-style-type: none"> <i>No implications have been identified</i> 	<i>Senior Licensing Officer</i>
Procurement	<ul style="list-style-type: none"> <i>No implications have been identified</i> 	<i>Senior Licensing Officer</i>
Biodiversity and Climate Change	<ul style="list-style-type: none"> <i>There are no implications on biodiversity and climate change.</i> 	<i>Senior Licensing Officer</i>

2. INTRODUCTION AND BACKGROUND

2.1 The Business and Planning Bill 2019-21 was made law in July 2020 and introduced a range of measures intended to support the economy recover from the disruption caused by the COVID-19 outbreak in the UK. The Bill introduced a number of urgent measures to help businesses succeed in new and challenging conditions and removed short term obstacles that could get in their way.

The provisions made it easier for businesses that sell food and drink for consumption on or off the premises to seat and serve customers outdoors through temporary changes to regulatory procedures (Highways, Planning and Street Trading) and the alcohol licensing regime. The Bill introduced a new licence known as a "pavement licence".

2.2 A pavement licence authorises the operator of a business selling food and drink to put furniture such as tables and chairs on the highway adjacent to its premises to sell food and drink from and/or for its customers to use. These licenses were initially meant to expire on 30 September 2021 but the provisions have been extended to September 2022.

2.3 On 11th May 2021 an application for a Pavement Licence was received from Mr Roy Pereira to place tables and chairs on the road outside Wildwood Restaurant, 37-41 Earl Street, Maidstone, Kent, ME14 1PF, Monday to Sunday 11:30 – 17:00. The application form is attached as Appendix 1 and the plans as Appendix 2.

2.4 Prior to the application being made the applicant was made aware that tables and chairs could not be placed on the pavement outside the premises due to the depth of the pavement. It would not be possible for them to comply with the requirement specified by the Highways conditions at no 9 of a pavement licence.

Highway Authority Conditions

- *No tables, chairs or temporary street furniture sited on a footway are to be placed within 1.2m of the edge of an adjacent carriageway. A minimum clear footway width of 1.5m must be obtained at all times and 2m in busy locations or at busy times except in the following circumstances where additional width may be required:*

A – Proposals which place furniture within 20m of a road junction or roundabout.

B – Proposals which place furniture within 15m of a push button, zebra crossing or pedestrian island crossing.

C – Proposals which place furniture within 5m of a bus stop

Additional widths may be required to accommodate social distancing in line with the guidance issued by the Secretary of State.

- *Every table, chair and item of temporary street furniture shall be positioned so that it does not impede the surface water drainage of the highway nor obstruct*

access to any premises unless the consent of the occupier of these premises has been obtained.

- *No items shall be sited as to obstruct access to any premises unless the consent of the occupier of these premises has been obtained. No items shall be sited in such a way that is obstructs any fire exits or dry risers etc.*
- *No tables, chairs or temporary street furniture shall be left on the highway longer that is necessary. Tables, chairs and temporary furniture within a pedestrianised area cover by a traffic Regulation Order shall only be placed on the highway during the hours of pedestrianisation. Tables, chairs and temporary street furniture shall be taken inside and stored during the hours when business is not trading.*
- *All tables, Chairs and temporary furniture shall be separated from the remaining highway using disability compliant barriers. This means that barriers MUST:*
 - (a) Be between 1000mm and 1200mm in height*
 - (b) Have a continuous tapping rail (150mm to 200mm deep) or panel edge either on the ground or up to a maximum height of 200mm above the ground.*
 - (c) Have a colour contrast to ensure they are highly visible.*
 - (d) Be continuous around the area of tables, Chairs and temporary street furniture except for the access point*
- *No tables, chairs or temporary street furniture shall remain on the highway pursuant to this permission after the period of the pavement license has expired.*
- *The licensee shall be responsible for keeping the designated area in a clean and tidy condition at all times and shall ensure that any associated debris is removed at the end of each day and make good any damage caused to the surface area.*
- *No apparatus such as power cables or water pipes shall be allowed to be laid across or suspended above the highway for the purposes of providing services to outside areas on or off the highway.*
- *No wastewater or other substances shall be discharged on to the highway or highway drainage system*

Maidstone Borough Councils Pavement Licence Policy is attached as Appendix 3

- 2.5 As Earl Street has been temporarily pedestrianized with vehicle permitted between 5.30pm and 9am for loading/unloading and disabled parking, the applicant felt they could submit an application for tables and chairs to be in the road Monday to Sunday 11:30 – 17:00. Licensing attended the address to carry out a site assessment and attach the photos taken as Appendix 4, these photos were taken during the pedestrianized hours of 9am and 5 -30 pm and quite clearly show vehicles in the area.

- 2.6 The pavement licence consultation took place between 13th and 20th May 2021 with 1 objection received from KCC highways on the 14th May 2021, Appendix 5.
- 2.7 A decision to refuse the application was made on public safety grounds after considering the objection and the site assessment criteria at page 6 of the Pavement Licensing Policy (Appendix 3). It was felt that although Earl Street has been temporarily pedestrianised it clearly was not being enforced and that posed a danger to any customers that may be seated in the road outside Wildwood Restaurant. The applicant was advised and that letter is attached as Appendix 6.
- 2.8 The applicant submitted an appeal request on 26th May 2021 which is attached as Appendix 7.
- 2.9 Attached to this report is the procedure that is used for hearing applications with representations the Committee may wish to follow in their considerations, adapted as necessary. Appendix 8
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3. AVAILABLE OPTIONS

- 3.1 Grant the licence.
- 3.2 Grant the licence subject to additional conditions or requirements.
- 3.3 Refuse the licence.
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4. PREFERRED OPTION AND REASONS FOR RECOMMENDATIONS

- 4.1 There is no statutory appeal process for these decisions, however this applicant was given the option to appeal to the Licensing Sub-Committee.
- 4.2 Members needs to consider the application in accordance with our Pavement Licensing Policy and consider whether the reasons for refusal were sufficient when determining this application for a pavement Licence.
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5. RISK

- 5.1 There are no Risk Management issues as the matter has been dealt with in accordance with our Pavement Licensing Policy.
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6. CONSULTATION RESULTS AND PREVIOUS COMMITTEE FEEDBACK

- 6.1 N/A
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7. NEXT STEPS: COMMUNICATION AND IMPLEMENTATION OF THE DECISION

7.1 N/A

8. REPORT APPENDICES

The following documents are to be published with this report and form part of the report:

- Appendix 1: Application Form
 - Appendix 2: Plans
 - Appendix 3: Pavement Licensing Policy
 - Appendix 4: Site Assessment Photo's
 - Appendix 5: KCC Highways objection
 - Appendix 6: Refused decision Notice
 - Appendix 7: Applicant's appeal e-mail
 - Appendix 8: Hearing Procedure
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9. BACKGROUND PAPERS

[*Business and Planning Act 2020*](#)

[Pavement Licence Guidance](#)

[Pavement Licence conditions](#)