

APPLICATION FOR A PAVEMENT CAFE LICENCE

APPLICANT: MANDY MARSH REF NO:DL13/00750/PAVEM

PREMISES: KIKI'S PUBLIC HOUSE
06 BAKEHOUSE HILL, DARLINGTON, DL1 5QA

PROPOSED HOURS 11.00 – 21.00 MONDAY TO SATURDAY ALL YEAR ROUND
11.00 – 21.00 SUNDAY (SEPTEMBER TO APRIL)
12.00 – 20.00 SUNDAY (MAY TO AUGUST)

Notification to Consultees:

Chief Constable	Environmental Health Manager
Chief Fire Officer	Highways
Planning Manager	Darlington Association on Disability

LEGISLATION

The licensing of pavement cafes is regulated by the Highways Act 1980 (the 1980 Act). Section 115E of the 1980 Act permits the Council to issue Pavement Café Licences for areas of the public highway.

Section 115A(7) of the 1980 Act states that “frontagers” means: “the owners and occupiers of any premises adjoining the part of the highway on, in or over which an object or structure would be placed or on which facilities for recreation or refreshment or both, have been, are being or would be provided; but frontagers have an interest under this Part of this Act only in proposals to place objects or structures or provide operate facilities wholly or partly **between their premises and the centre of the highway.**”

Section 115E (3) of the 1980 Act prohibits a council from granting such permission unless the consent of frontagers with such an interest is obtained; however consent must be not be unreasonably withheld.

Section 115F of the 1980 Act permits the Council to require payment for, and place conditions on, any grant of licence.

Section 115G of the 1980 Act requires that a council shall not exercise its power or grant a permission until they have taken into consideration all representations made to them in connection with the proposal.

Section 115J of the 1980 Act states that it may be reasonable for consent (as detailed in Section 115E) to be given for a specified period of time or subject to the payment of a reasonable sum. The section also states that consent is to be treated as unreasonably withheld if the Council has served a notice asking for consent and a response of either consent or refusal to give consent is not received within 28 days.

Section 115J goes on to state that any question whether consent is unreasonably withheld or is given subject to reasonable conditions shall be referred to an independent arbitrator. He can, if he considers consent has been unreasonably withheld but conditions could be placed which would make it reasonable to give consent, direct that consent may be deemed subject to those conditions. The expenses and remuneration of the arbitrator must be paid by the council seeking the consent. In 2008 when the Council last made enquiries in respect of a different premise application this cost was in excess of £1000.

Section 115K deals with any failure to comply with terms of the licence and permits the Council to serve a notice requiring remedy of the breach. If this notice is not complied with, the Council may take the steps themselves and recover reasonable expenses. The standard conditions attached to pavement café licences granted by Darlington Borough Council are appended at **Appendix 1A**

FURTHER INFORMATION RELATING TO EXPRESS CONSENT

In light of previous representations (in respect of other premises) from neighbouring businesses, officers have checked the position of “express consent” with the Council’s legal section. Officers from that section have advised that for express consent to be required the frontage would have to be affected by the placing of the structure etc between his own frontage and the highway, rather than a structure adjacent to his own frontage.

BACKGROUND

On 06 April 2009 an application was properly made by Ms Ann Carol Labourn for a Pavement Cafe Licence in respect of the pavement fronting what was then Hogarth’s Bar Café, 06 Bakehouse Hill Darlington. Following the consultation process, no objections were received and a Pavement Café Licence was granted with effect from 14 May 2009 until 31 March 2010 for the following hours:

10.00 to 21.00 every Day, all year round.

On 06 May 2010, an application was made to renew the Pavement Cafe Licence. No objections were received and the licence was granted until 31 March 2011 for the same hours as stated above.

On 22 March 2011, an application was made to renew the Pavement Cafe Licence. No objections were received and the licence was granted until 31 March 2012 for the same hours as stated above.

On 28 March 2012, an application was made to renew the Pavement Café Licence. No objections were received and the licence was granted until 31 March 2013 for the same hours as stated above. No application was received to renew this licence and it expired on 31 March 2013.

THE NEW APPLICATION

On 10 May 2013, an application for a Pavement Café Licence was received from Ms Mandy Marsh for the same premises as detailed above, however the name of the premises had been changed to Kiki’s. Further information was required and the application was resubmitted on 31 May 2013 and again on 15 July 2013 when the consultation process was started. No objections were received from the bodies indicated earlier in this report.

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The Applicant indicated that she had obtained the consent of one of her neighbours, namely the Pennyweight but had not obtained the consent of the other neighbour, Foffano's.

THE REPRESENTATION

On 08 August 2013, a representation was received from Foffano's. This is based on issues of anti-social behaviour occurring at Kiki's (including drunkenness, disorderly behaviour and fighting) and lack of management controls. The representation has been reproduced in full at **Appendix 1B**. Members will note that there has not been any representation from the Police in respect of issues of crime and disorder.

Foffano's has a pavement café licence for the hours 11.00 to 21.00 every day all year round. The frontage of Foffano's is adjacent to Kiki's rather than between Kiki's and the Highway and is therefore not affected in terms of express consent being required. Foffano's is however entitled to make a representation which the Council must consider in accordance with Section 115G of the 1980 Act but the Council is not bound by Foffano's failing to give his express consent.

THE APPLICANT'S RESPONSE

On 20 August 2013, a response was received from Ms Marsh in respect of the representation made by Foffano's. In summary, Ms Marsh denies that there is any anti-social behaviour associated with the premises. Her response has been reproduced in full at **Appendix 1C**

ADDITIONAL INFORMATION

Kiki's Public House is licensed in accordance with the Licensing Act 2003 for the sale of alcohol for consumption on and off the premises between the hours of:

11.00 - 24.00	Monday to Saturday
12.00 – 22.30	Sunday

And for the provision of regulated entertainment between the hours of

Live music:	20.00 - 23.30	Monday to Saturday
	16.00 – 22.00	Sunday

Recorded Music & Dancing	11.00 – 24.00	Monday to Saturday
	12.00 – 22.30	Sunday

Indoor Sporting Events	12.00 - 23.00	Monday to Saturday
	12.00 – 22.00	Sunday

The Premises Licence Holder is Mandy Susan Marsh

Foffano's Bar & Brassiere is licensed in accordance with the Licensing Act 2003 for the sale of alcohol for consumption on and off the premises between the hours of:

11.00 - 23.00	Monday to Saturday
12.00 – 22.30	Sunday

And for the provision of regulated entertainment (Recorded Music) between the hours of

11.00 – 23.00	Monday to Saturday
12.00 – 22.30	Sunday.

The Premises licence holder is Stefano Foffano

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MEMBERS' OPTIONS

Members' options are as follows:

1. Grant the application subject to the standard pavement cafe conditions,
2. Place any additional conditions on the licence that Members consider are necessary to address any concerns,
3. Reject all or part of the application.

Members are reminded that there is no right of appeal to the Magistrates or County Court in relation to this matter. Members will however, be aware that dissatisfied parties may elect to seek a judicial review of the Council's decision.

Richard Alty
Director of Services for Place

Contact Officer: Pam Ross Ext 2647

For admin use only: **Date of Committee: 01 October 2013**
Sub Committee Decision:

Grant/Refuse/additional conditions
Reasons:

STANDARD POLICIES & CONDITIONS FOR PAVEMENT CAFÉ LICENCES

POLICIES

- a Licences shall be issued for a maximum period of one year
- b Application fees shall not be refunded should the application be unsuccessful
- c On certain event days the pavement café may be required to close. Should this be required a notification will be sent from the Council's Public Events Safety Advisory Group (PESAG) advising of the times and reason for the closure)

CONDITIONS

Creating a Boundary

- 1 The boundary and layout of the pavement café as defined by the plan attached to the Licence shall be adhered to at all times. A copy of the licence with this plan must be displayed at the premises at all times
- 2 All activity associated with the pavement café shall be within the boundary including tables, chairs, menu boards, advertising etc
- 3 The boundary of the pavement café shall be marked by a physical barrier, the design and dimensions of which must be agreed, in writing, by the Council
- 4 A minimum of 2.0 metres should normally be available between the edge of the pavement café and the edge of any adjacent carriageway or vehicle route although the Council may waive this requirement in certain locations e.g. Skinnergate. If it is proposed that the pavement café will have a pedestrian route passing through it, then that route should be as straight as possible and free from obstruction
- 5 Emergency routes from adjacent buildings and the applicant's premises should not be obstructed by the pavement café
- 6 No permanent obstruction shall be allowed in the footways within the pavement café area that may cause a safety hazard to users of the public highway. The use of Advertisement Boards is prohibited

Managing the Pavement Café

- 7 The maximum permitted hours of operation will be between 8.30 am and 9.00 pm with a drinking up period of 30 minutes (between May – August, the maximum hours will be 8.30 am until 10.00 pm)
- 8 The licensee must take out Public Liability insurance cover for the pavement café and shall indemnify the Council against all claims in respect of injury, damage or loss arising out of the granting of permission, (eg damage to the highway or highway furniture) to a minimum value of £5,000,000 unless such claims arise out of the Council's own negligence
- 9 All furniture used in the pavement café shall be of high quality and approved by the Council (amended from wood and metal).

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- 10 If the area of the pavement café is in direct sun between 12 noon and 3.00 pm parasols should be included as part of the design to protect customers from excessive ultra violet radiation
- 11 Only patrons seated at tables shall be served or permitted within the pavement café
- 12 Patrons shall be offered the choice to purchase both food and drink at the Pavement Café and menus shall be prominently displayed showing availability and price of food and drinks served
- 13 If the outside area is not licensed in accordance with the Licensing Act 2003, patrons should be asked to order food and drink from inside of the premises. The order can then be served to them by a waitress/waiter
- 14 The licensee shall keep the area within the boundaries clean and litter free. Any litter that escapes from the inside of the licensed area to the outside of the area shall be collected by the Licensee
- 15 Suitable litter/refuse bin(s) shall be provided within the pavement café area at all times of operation. The Licensee shall be responsible for disposing of all waste produced at the pavement café
- 16 The Licensee shall ensure tables are immediately cleared when customers have finished eating to minimise attraction of birds and flying insects
- 17 The playing of amplified music shall not be permitted within the pavement café area
- 18 The Licensee shall be responsible for the conduct of people, both patrons and employees, within the pavement café area. Unruly or rowdy behaviour must not be tolerated
- 19 At the end of each trading session the entire pavement café area shall be cleaned
20. All furniture must be removed from the pavement café and stored safely and securely, away from the highway when the pavement café is not operational

Service

- 21 Standard types of crockery ie china cups and saucers as used within the premises may also be used within the pavement café
- 22 Alcoholic and soft drinks to be consumed outside of the premises or within the pavement cafe must be served in plastic glasses or paper cups.

REPRESENTATION

Representor: Stefano & Emma Foffano –Foffano's

"We are writing to object to the provision of a pavement café licence to Kiki's Bar at 6 Bakehouse Hill, Darlington.

We object on the grounds of lack of management of anti-social behaviour. We currently run our own pavement café and finding our customers unable to enjoy this facility due to groups of people gathering out the front who are generally drunk and disorderly using profanities and even on some occasions fighting.

We are a family orientated business who regularly has children visiting the premises and it is detrimental to our business for such behaviour to be on display.

We believe that the management would be unable to operate a pavement café in a safe and orderly manner."

APPLICANT'S RESPONSE TO THE REPRESENTATION

"In response to your recent letter regarding a pavement café at Kiki's.

Firstly lack of management, I would like to point out that I have taken into account every bit of information received from the Council, good and bad, and acted immediately. I have door supervisors on at our busy times day or night and during private functions on weekends which I don't have to, I feel it is helpful so no anti-social behaviour does happen.

Secondly since taking over management of Kiki's there has been no cause for police to be called due to anti-social behaviour or fighting, if there had been this would have been dealt with in a fast and appropriate manner. I think it is wrong that people can speculate that this or other anti-social behaviour would arise or be a problem with the café licence as other establishments in the immediate vicinity have one and don't seem to have any problems obtaining one. If there is anything else I could do please feel free to give any advice on the matter; it is affecting my business quite drastically and hope to hear back soon".