

AGENDA SUPPLEMENT

Executive

To: Councillors Aspden (Chair), Ayre, Craghill, D'Agorne, Mason, Runciman, Smalley, Waller and Widdowson

Date: Tuesday, 22 November 2022

Time: 5.30 pm

Venue: The George Hudson Board Room - 1st Floor West Offices (F045)

The Agenda for the above meeting was published on **14 November 2022**. The attached additional documents are now available for the following agenda item:

- 7. Pavement Café Licence Update** (Pages 1 - 38)
Annexes B and C to the above report were marked as 'draft' in the published agenda. The final versions of these annexes are now attached. Please note that the actual content of the annexes is the same.

This agenda supplement was published on **14 November 2022**.

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Business and Planning Act 2020 - - Pavement café licence guidance

COVID_19 Economic Recovery – Updated CYC pavement café licensing process

Date: 22/11/2022

Guidance note

Contents

1. Purpose.....	4
2. Pavement licences: temporary process and government guidance	4
3. Business and Planning Act 2020 pavement café licensing process.....	4
a. Applying for a licence	5
b. Advanced information	5
c. Application form	6
d. What does a pavement café licence allow?	7
e. Consultation process	8
f. Determination of application	8
g. National and local conditions	9
National conditions.....	9
Local conditions	10
h. Licence application fee	12
i. Receiving your licence	12
j. Amending an existing licence	13
k. Enforcement and termination	13
4. Glossary of terms	15

Version control

Version	Description of changes	
V1	COVID_19 Economic Recovery – Interim CYC pavement café licensing process, dated 9/07/20	Initial guidance published by CYC before the Bill was enacted to enable businesses to apply for licences
V2	COVID_19 Economic Recovery – Updated CYC pavement café licensing process, dated 23/07/20	Updated guidance following the enactment of the Business and Planning Act 2020
	<p>Key changes between V1 and V2:</p> <ul style="list-style-type: none"> - Removal of the interim process - Consultation and determination periods changed from 5 working days to 7 calendar days (as per legislation) - Duration of licence changed to minimum 3 months and maximum 12 months for all licences issued under the Business and Planning Act 2020 - Addition of the national smoke free seating condition - Application of the local conditions to deemed licence applications 	
V3	COVID_19 Economic Recovery – Updated CYC pavement café licensing process, dated 18/11/20	Updated guidance
	<p>Key changes between V2 and V3:</p> <ul style="list-style-type: none"> - Screens will be permitted on a case by case basis - Parasols will be permitted to cover the licensed area, but must be applied for - Electric patio heaters are now permitted. Fuel burning patio heaters will not be permitted. - Electric cables must be covered across the highway and in the licensed area - More detailed information on insurance requirements included - Additional information on the definition of outdoor areas 	
V4	COVID_19 Economic Recovery – Updated CYC pavement café licensing process, dated 26/11/20	Updated guidance
	<p>Key changes between V3 and V4:</p> <ul style="list-style-type: none"> - Addition of Parklet/Decked Area Guidance in Appendix C 	
V5	COVID_19 Economic Recovery – Updated CYC pavement café licensing process, dated 08/04/21	Updated guidance

Version	Description of changes	
	Key changes between V4 and V5: <ul style="list-style-type: none"> - Amendment of Parklet/Decked Area Guidance in Appendix C, change from SAG approval to Security and Safety Review 	
V6	COVID_19 Economic Recovery – Updated CYC pavement café licensing process, dated 07/09/21	Updated guidance
	Key changes between V5 and V6: <ul style="list-style-type: none"> - Updated dates in line with Business and Planning act 2020 extension - Removal of licence fee - Information on enforcement action updated - Updated information on Equality Act duty and support the work of the Council and Police services on security and counter-terrorism 	
V7	COVID_19 Economic Recovery – Updated CYC pavement café licensing process, dated 26/10/21	Updated guidance
	Key changes between V6 and V7: <ul style="list-style-type: none"> - Barrier guidelines updated to enclose area. 	
V8	COVID_19 Economic Recovery – Updated CYC pavement café licensing process, dated 22/11/22	Updated guidance
	Key changes between V7 and V8: <ul style="list-style-type: none"> - To be updated following 22 November 2022 Executive decision session and Full Council decision. 	

1. Purpose

This guidance document presents City of York Council's approach to issuing pavement café licences under the Business and Planning Act 2020 and in light of associated government guidance.

It describes the process through which pavement café licences will be issued in compliance with the Business and Planning Act 2020. These temporary licences will be valid for a maximum period of one year (and not beyond the end of 30 September 2023).

2. Pavement licences: temporary process and government guidance

Pavement café licences are granted by the local authority to allow businesses to place removable furniture in parts of the relevant highway (generally footways and/or carriageways in pedestrianised areas).

A temporary fast-track process, removing the need for planning permission, was introduced by the Business and Planning Act in 2020. The aim was to offer a streamlined process to help with recovery from the Covid pandemic. This temporary process was initially set up for a year but has since been extended twice. Licences can therefore currently be issued until the end September 2023.

The government's "Pavement licences: guidance" identifies the following key elements of the temporary fast-track licensing process:

- The removal of the requirement for planning permission;
- The reduction of the consultation period for licence applications, from 28 to 7 days;
- The reduction in the time in which the local authority must determine the licence from 28 to 7 days, (after the 7-day consultation period has ended), with the licences deemed to have been granted and valid for a year if the authority has not determined within this time period;
- The capping of the maximum fee that can be charged for a licence at £100; and
- Temporary amendments to the Licensing Act 2003, to allow applicants who have a licence to serve alcohol on-premises to sell alcohol for consumption off the premises, without the need to apply for a licence variation.

It is important to note that the grant of a pavement licence only permits the placing of furniture on the highway. Other regulatory frameworks still apply such as the need for alcohol licences and the need to comply with registration requirements for food businesses. The changes introduced by the Business and Planning Act do not apply to land that is not covered by the regime for placing furniture on the highway in Part 7A of the Highways Act 1980 or to permanent structures (such as parklets).

3. Business and Planning Act 2020 pavement café licensing process

This section describes the pavement café licence application process under the Business and Planning Act 2020.

a. Applying for a licence

Eligibility: A business which uses (or proposes to use) premises for the sale of food or drink for consumption (on or off the premises) can apply for a licence to place removable furniture in a relevant highway.

Identifying a pavement café area: The licensed area should be adopted highway adjacent to the premises.

If the proposed pavement café area is situated adjacent to any other property than the applicant's premises, the written consent of the interested frontages is required. The applicant will also need to provide evidence that their public liability insurance will cover the use of these areas.

b. Advanced information

What is adopted highway: Applicants can check if the area under consideration is adopted highway (including footways) at this link: [Road Adoption](#).

What to consider before submitting an application: Licences are unlikely to be granted in some areas, due to narrow footways, high traffic or pedestrian flows and other safety and accessibility issues. This is primarily based on the criteria set out in Inclusive Mobility (Section 4.2 – available here:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1044542/inclusive-mobility-a-guide-to-best-practice-on-access-to-pedestrian-and-transport-infrastructure.pdf), resulting in licences unlikely to be granted in the following areas:

- On footways next to live carriageways (without traffic restrictions), where the footway width is less than 2.5m or 3m for high pedestrian flow areas. This is because a corridor for passing pedestrians with a minimum width of 1.5m is required, increasing to 2m in high pedestrian flow areas (e.g. busy streets and junctions, areas near pedestrian crossings, etc); and
- In pedestrianised areas or areas where traffic is restricted
 - Where the furniture would reduce the highway width to below 3m (3m is the minimum width required for emergency vehicle access), unless an alternative access arrangement can be put in place and agreed with the emergency services. Where this can be put in place, a corridor for passing pedestrians with a minimum width of 1.5m will still be required, increased to 2m in high footfall areas;
 - Where the furniture would result in access being restricted for wheelchair and mobility aid users due to a lack of dropped kerbs/raised crossing points, if it is not possible to use temporary ramps or build permanent dropped kerbs/raised crossings;
 - Licences are likely to be restricted to footstreet/traffic restriction hours;
 - Other organisations might need to be consulted/consent where they have rights or manage specific areas, for example, Make It York in the footstreets area.

c. Application form

Applications must be sent to City of York Council by email using the Council's standard application form and providing electronic versions of the documents listed below to support the application.

- Email address: cafelicence@york.gov.uk
- Webpage: www.york.gov.uk/PavementCafeLicences

This requires the applicant to provide the following information:

- Specify the premises and the area of adopted highway to which the application relates ;
- Provide a plan clearly showing the proposed area to be covered by the licence in relation to the highway and the licensed premises (if not to scale, measurements will need to be clearly shown), potentially supported by photos showing the proposed furniture and information on how it will be set out within the proposed area;
- If the application covers an area which is adjacent to other premises (e.g. in front of neighbouring premises), evidence of the owner's consent and insurance cover are required;
- Specify the purpose (or purposes) for which the furniture will be used, which must be to sell or serve food or drink, and/or for use by other people for the consumption of food or drink. In both cases the food or drink must be supplied from, or in connection with relevant use of the premises;
- State the proposed duration of the licence (3 months minimum and up to 12 months);
- Specify the days of the week and the hours when it is proposed to have furniture on the highway;
- Describe the type of furniture to which the application relates, for example: tables, chairs, parasols, screens, heaters, and/or stalls;
- Describe how/where the furniture will be stored, off the highway (including footways), when the pavement café is not in use. This includes storage when the premises might be in use (e.g. where will the furniture be stored in the morning when the premises may be open but the furniture is not allowed on the highway before pedestrianised hours);
- Provide public liability insurance certificate or similar evidence of cover for a minimum amount of £5 million, including the proposed outdoor area(s);
- Specify the date on which the application is made;
- Provide contact details for the applicant;
- Provide evidence before the end of the consultation period that the applicant has met the requirement to give notice of the application (for example photographs of the notice placed in the premise's windows on various dates during the 7 day consultation period);
- Provide information on any existing/previous pavement licence or of previous licence application (if applicable).

Applicants are expected to inform the council of any changes to the details provided in the licence application, including licensee detail changes or change of business name, via the use of the amendment option on the application form available on the Council's website.

d. What does a pavement café licence allow?

A licence permits the business to use furniture placed on the highway to sell or serve food or drink and/or allow it to be used by people for consumption of food or drink supplied from, or in connection with the use of the premises.

The furniture which may be used is:

- Counters or stalls for selling or serving food or drink;
- Tables, counters or shelves on which food or drink can be placed;
- Chairs, benches or other forms of seating;
- Umbrellas, screens, and bins used in connection with the outdoor consumption of food or drink;
- Electric infrared outdoor heaters (no gas heaters or fire pits);
- Barriers will be required to enclose the café area. These should be stable and sturdy canvas separator on metal uprights with a tapping rail (no protruding parts, no ropes or chains). This is to provide positive guidance for blind and visually impaired users.

Music speakers are not permitted.

Canopies, awnings, blinds etc. which are to be attached to the building will usually require advertisement consent or planning permission. If an applicant wants to include such equipment in a pavement café application, advice should be sought on planning permission requirements before the application is submitted.

The furniture must be removable (i.e. not a permanent fixed structure, able to be moved easily, and stored away when the premises are shut or if the highway is needed for other purposes).

It is important for the applicant to note that any licence issued under this process will not be valid after the end of September 2023. This should be considered when investing in outdoor furniture and equipment as it may not be possible to continue using these after the licence expires.

Off-sales of alcohol authorisation

Premises licensed to sell/supply alcohol for consumption on the premises (pubs / bars / restaurants / cafes) can also sell/supply alcohol for consumption off the premises without restrictions under the temporary licensing regime.

For example if there is a condition on your licence (such as 'off sales of alcohol can only be supplied in a sealed container'), this condition will not apply. Off sales can only be sold/supplied until 11pm. This provision will end on 30 September 2023.

This provision does not apply to premises that are authorised to sell/supply alcohol by means of a 'club premises certificate', for example private members clubs.

Advice should be sought from the Licensing Team for alcohol licensing issues – licensing@york.gov.uk

e. Consultation process

The applicant is required to affix a notice (using the Council's standard notice template provided on our website) to the premises. The notice must be easily visible and legible to the public and affixed on the day the application is submitted to the local authority. Applicants are encouraged to keep evidence of this (by taking a picture of the notice).

The applicant must ensure that the notice remains in place for 7 days, beginning the day after the application is submitted to the local authority.

City of York Council will consult with:

- North Yorkshire Police Licensing Section;
- Make it York, York Museum Trust (where relevant); and
- Other persons or groups it considers appropriate.

The notice includes information for members of the public to email the Council with a request for further information. If they want to consult the relevant documents for a specific application, these will generally be sent by email (excluding any personal information). Members of the public are invited to email their comments to the Council within the 7-day consultation period.

f. Determination of application

Once an application is received, the authority will aim to check the documents provided within 1 working day and acknowledge the receipt of a valid application or request further information from the applicant. Please note that the application may be refused if the required information has not been provided.

The local authority will aim to determine the application within 14 days (starting on the day after the application has been acknowledged as complete, including 7 days for the consultation period and 7 days for determination after the end of the consultation period).

If the local authority fails to consider the application within this 14-day period, the pavement café licence applied for will be deemed to have been granted for a year (and will expire no later than the end of 30 September 2023). Please note that the national and local conditions (advertised by the Council on the day prior to the application submission date) set out in below will automatically apply to applications which are deemed granted.

If the Council determines the application before the end of the determination period, the Council can:

- Grant the licence in respect of any or all of the purposes specified in the application, for some or all of the parts of the highway specified in the application, and impose additional conditions; or
- Refuse the application (please note that the application can also be refused by the authority if the information required to determine the application has not been provided).

If the applicant is unhappy with the decision taken by the authority, the applicant will be invited to log a complaint through the Have Your Say process. This will enable concerns to be escalated and considered by a member of the Council's management team. There is no statutory or other formal appeal process against a decision made

by the Council under the Business and Planning Act 2020. A judicial review process is available via the High Court.

g. National and local conditions

National conditions

National 'no obstruction' condition referred to in 5(4) and 3(6) of the Business and Planning Act 2020.

This condition refers to the right of traffic (other than vehicular) to enter and pass along the highway and to have normal access to premises adjoining the highway. It also includes the need for permitted traffic to be able to pass and utilities to have access to their apparatus in, on, or over the highway.

National condition relating to clear routes of access

The national condition requires clear routes of access to be maintained, taking into account the needs of disabled people and the recommended minimum footway widths and distances required for access by mobility impaired and visually impaired people as set out in Section 4.2 of Inclusive Mobility (available here: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1044542/inclusive-mobility-a-guide-to-best-practice-on-access-to-pedestrian-and-transport-infrastructure.pdf).

This requires:

- A **clear width of 2m** allows two wheelchairs to pass one another comfortably. This should be regarded as the minimum under normal circumstances.
- Where this is not possible because of physical constraints, **1.5m could be regarded as the minimum acceptable** under most circumstances, giving sufficient space for a wheelchair user and a walker to pass one another.
- **The absolute minimum, where there is an obstacle, should be 1m clear space. The maximum length of restricted width should be 6m** (see also Section 8.3).
 - Section 8.3 states: Where an access route is predominantly less than 1.8m wide, **passing places** should be provided to allow two wheelchair users to pass each other. A passing place should be a minimum of 2m long by a minimum of 1.8m wide and located within direct sight of another, or at a maximum distance of 50 metres from another, whichever is the closer.
- If there are local restrictions or obstacles causing this sort of reduction in width, they should be grouped in a logical and regular pattern to assist visually impaired people.
- It is also recommended that there should be minimum widths of 3m at bus stops and 3.5m to 4.5m by shops, though it is recognized that available space will not always be sufficient to achieve these dimensions.

National condition relating to smoke free seating

Where seating used for the purpose of consuming food or drink has been, (or is to be) placed on the relevant highway, the national condition requires a licence-holder to make reasonable provision for seating where smoking is not permitted. This means that, where businesses provide for smokers, customers will also have the option of sitting in a non-smoking area. This can be done by:

- Providing clear 'smoking' and 'non-smoking' areas, with 'no smoking' signage displayed in designated 'smoke-free' zones in accordance with Smoke-free (signs) regulations 2012;
- No ash trays or similar receptacles provided or permitted to be left on furniture where smoke-free seating is identified; and
- Providing a minimum 2 metres distance between non-smoking and smoking areas, wherever possible.

Local conditions

The Council reserves the right to add additional conditions to individual licence applications where it is appropriate to do so.

Emergency access - For pedestrianised streets, a minimum width of 3m must remain free and unobstructed to facilitate emergency vehicle access. This figure may be increased where there is a heavy pedestrian flow.

The area shall be vacated immediately if requested by the local authority, the Police, any other emergency service, or a statutory undertaker, without any liability for compensation, refund of application fee, or damage arising. The reasons for the area being vacated might be public safety, emergency, to allow events or works to be carried out in, under or above the highway or in the vicinity of the area, public procession, unrest, disturbance, or any other reason deemed necessary by the local authority.

Area to be used - Only the licensed and designated area shall be used for trading.

Times of use – The times and days of the week when the pavement café use is permitted will be stated in the licence. This might be linked to footstreet hours for example. Any applications deemed granted will only be allowed to operate between 10.30am and 5pm.

Access to the premises - A clear pathway, at least 1.5m wide, shall be maintained at all times to allow entrance and exit from the licensed premises. Licence holders have a separate duty to make reasonable adjustments to enable access to their shops and services for people with reduced mobility under the Equality Act 2010.

Public health and safety – The licence holder will be responsible for ensuring that uses conform to any applicable public health guidance (for example on social distancing) and that any reasonable crowd management measures needed as a result of a licence being granted are in place.

Licence holders should aim to support the work of the Council and Police services on security and counter-terrorism by ensuring that staff complete the ACT Awareness E-learning course (<https://ct.highfieldlearning.com/>) and checking their CCTV systems, where in place, to ensure they are compliant and work correctly.

Public liability insurance - The licence holder shall maintain a policy of public liability insurance indemnifying the Council against any injury or damage to any person or property and against any actions, proceedings, claims, demands or liability arising from the use of the licensed area (including any chairs and tables and any other objects including but not limited to heaters, where these are used).

For this purpose, the licence holder must take out a policy of insurance in the sum of at least £5,000,000 in respect of any one incident.

Evidence of this insurance policy shall be included in the licence application. The licence holder must produce to the Council on request the current receipts for premium payments and confirmation of the annual renewals of the policy. A valid third-party public liability insurance certificate shall be held by the licence holder at all times to the satisfaction of the Council.

Furniture - Only approved furniture (as detailed in the licence) shall be placed within the designated area. No other furniture (such as advertising boards) shall be placed within this area.

Barriers must be placed to enclose the pavement café area.

What barriers are required?

Barriers are required to comply with BS 8300-1:2018 Design of an accessible and inclusive built environment, which states:

“Outdoor refreshment areas should be contained by barriers to all sides, to ensure that moveable furniture does not spread across clear pedestrian routes causing an obstruction.

The feet or base of temporary or permanent barriers should not project into the minimum clear width of any access route. Barriers should incorporate a solid detectable rail or edge not higher than 150 mm above ground level to allow detection for people who are blind or partially sighted using a white cane.

The gap in the barriers which people use to access the refreshment area should be at least 1m wide (CYC note – the gaps should be no wider than 1.5m). Barriers should contrast visually with the background against which they are seen.”

Screens may be considered on a case-by-case basis. Where permitted and above 1m high, screens must be transparent.

All furniture must be removed at the end of the approved hours of use. Suitable storage for all furniture shall be identified by the applicant within the licensed premises and used for storage when the furniture is not in use thereafter. No equipment is to be stored on the highway at any time outside the licensed hours.

All equipment is to be suitable for use outside (non-reflective and of reasonable substance such that it cannot easily be pushed or blown over by the wind), kept clean and well maintained. No damaged equipment shall be used.

Tables, chairs and barriers shall not be positioned so as to obstruct or obscure road signs, visibility at junctions, traffic signals.

Parasols – Parasols are permitted within the licensed area, but they must be included in your application. These must not extend beyond the licensed area. Gazebos or parasols with sides are not permitted. Where they are allowed, canopies or parasols shall be no lower than 2.1 metres and they shall be adequately secured.

Outdoor heaters -If outdoor heaters are to be used in the licensed area, they need to be included in your application and must be electric infrared heaters (meeting BS Standards BS EN 60529:1992 for electric heaters). Gas heaters or fire pits are not permitted.

Patio heaters that attach to the sides of the building usually require planning permission and can therefore not be permitted under this licensing process. Where electric infrared heaters are permitted, the Council expects licensees to reduce their environmental impact by switching to green energy tariffs and/or offsetting the emissions linked to the use of the outdoor heaters.

Electrical cables – Cables must be protected by an anti-trip cover, both within the licensed area and across the public highway.

Cleanliness - The licence holder will ensure that the designated area is maintained in a clean and tidy condition. The licence holder shall also take appropriate precautions to prevent the surrounding areas from becoming littered, as a result of trading activities.

Use of open vessels – Only reusable plastic or cardboard containers (or similar materials, not glass) may be used for outdoor customers.

Conduct of licence holder and customers - The behaviour of customers is the responsibility of the licence holder. The customers must not be a nuisance or annoy users of the highway or tenants/residents of adjoining premises.

The licence holder and customers must not unreasonably stop, endanger or hinder pedestrians, cyclists or vehicles using the highway.

Repeated complaints of this nature may result in the licence being revoked.

The licence holder is expected to co-operate with the reasonable needs of neighbouring premises. If there are disputes, licences might be revoked.

Toilet facilities – Toilet facilities must be available for customers to use on the premises.

Publicity - The licence shall be available to view within the premises to which it relates.

Validity - The licence shall be rendered invalid, should the licence holder cease to own the premises or cease employment at the premises to which the licence relates. A new application must be made by the new tenants/owners.

Where a licence is granted in an area which is subject to a Temporary Traffic Regulation Order (TRO) to restrict vehicular access, the validity of the licence might be conditional on the TRO being in place. If the Temporary TRO expires, the licence will be revoked.

Claims - The Council shall be indemnified against all claims, actions or other costs, howsoever arising.

The licence holder is responsible for the health and safety of their staff working in the licensed area. Measures to mitigate health and safety concerns cannot be transferred to the local authority for action.

h. Licence application fee

Licences for the January to December 2023 period cost £100.

i. Receiving your licence

If the decision is taken to grant the licence, two copies of the licence will be forwarded to the applicant. The applicant will be required to sign both copies, saying

that they agree to abide by the conditions and terms set out in the licence. The applicant will then return one copy to the Council, keeping the other copy.

Provided that other approvals and licences are in place (if required), the applicant will then be able to commence use.

If the local authority has not responded within the statutory period (14 days), the licence application will be deemed granted and the authority will issue a temporary licence including the relevant conditions (these will include the national conditions and the local conditions publicised by the Council on the day prior to the application form submission date – as listed in this document).

j. Amending an existing licence

If an applicant wishes to extend or vary the terms of a pavement cafe licence granted under the Business and Planning Act 2020, they will need to submit a new application as set out above, and an additional application fee will be charged.

k. Enforcement and termination

If a condition imposed on a licence is breached, the local authority will issue a notice requiring the breach to be remedied and seek to recover any costs (where applicable).

The authority may revoke a licence in the following circumstances:

- For breach of condition, (whether or not a remediation notice has been issued); or
- Where:
 - There are risks to public health or safety;
 - The highway is being obstructed (other than by anything permitted by the licence);
 - There is anti-social behaviour or public nuisance – for example, the use is increasing the amount of noise generated late at night and/or litter is not being cleaned up;
 - The applicant provided false or misleading information in their application – for example they are selling hot food and applied for tables and chairs on which only drinks could be consumed; or
 - The applicant did not comply with the requirement to affix the notice to notify the public for the relevant period.

Key issues for which enforcement action will be taken are:

- Furniture set out or stored on the adopted highway, outside of the licensed times - This is a significant issue in the footstreets as the times of use are generally linked to the start and end of the pedestrianised period. When licence holders set out their tables and chairs too early, pedestrians have to step into the carriageway, in conflict with delivery vehicles and other traffic which are still permitted;
- Area where furniture is set out differs from what has been agreed in the licence – This is a significant issue as it can impede wheelchair access as well as access for authorised vehicles and emergency services; and
- Furniture in use differs from that specified in the licence – The majority of issues under this category relates to premises not installing the required barriers to

demarcate the pavement café area or barriers not being installed as agreed in the licence.

Up to two letters (notices) will be sent to licence holder asking for breaches to be addressed. If two letters have been sent for the same issue(s) and the licence is still not being complied with, the licence will be revoked.

The Council may also revoke the licence where all or any part of the area of the relevant highway to which the licence relates has become unsuitable for any purpose for which the licence was granted or deemed to be granted. For example, the licensed area (or road adjacent) is no longer pedestrianised.

The local authority also reserves the right to revoke or suspend the licence if the area is required for other highway purposes (for example for street or road works).

The licence holder can also surrender a pavement licence at any time by giving notice to the local authority. The application fee will not be reimbursed.

4. Glossary of terms

Access - approach, entry, internal movement or exit, including in cases of emergency (BS8300 definition)

Accessible - capable of being independently accessed and used (BS8300 definition)

Accessible route - any route that is used to access and use a place or space, including streets, parks and landscaped (BS8300 definition)

areas, to approach a building, or to move between buildings

Adopted highway – a public road (or path), including footways, managed and maintained by the highway authority

Areas where traffic is restricted – streets which are subject to traffic restrictions but not fully pedestrianised. For example, vehicular access is restricted on Fossgate during the day, except for access.

Carriageway - the part of a road intended for vehicles rather than pedestrians

Clear width - Clear distance measured between walls or other obstructions or across a path

CYC – City of York Council

Disability - physical or mental impairment that has a substantial and long-term negative effect on a person's ability to do normal daily activities (Equality Act 2010 definition)

Footway – a pavement, the part of a highway which has been set apart for pedestrians

Government guidance – In this document, this refers to “Pavement licences: guidance, Guidance to accompany pavement licensing introduced in the Business and Planning Act 2020”, published by the Government here:

<https://www.gov.uk/government/publications/pavement-licences-draft-guidance>

Licensed area – In this document, this refers to a pavement café area licensed under the Business and Planning Act 2020

Pedestrianised area – footstreet area. In York, this includes most city centre streets as described here: www.york.gov.uk/footstreets

Tapping rail - a rail installed on barriers, at approximately 150mm height, to guide blind or partially sighted pedestrians around the enclosed area

TRO - Traffic Regulation Order

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City of York Council
Equalities Impact Assessment

Who is submitting the proposal?

Directorate:	Place		
Service Area:	Transport		
Name of the proposal :	Pavement café licence update		
Lead officer:	Helene Vergereau		
Date assessment completed:	10 November 2022		
Names of those who contributed to the assessment :			
Name	Job title	Organisation	Area of expertise
Dave Atkinson	Head of Highways and Transport	CYC	Transport
James Gilchrist	Director of Transport, Environment and Planning	CYC	Transport & Planning
Sandra Branigan	Senior Solicitor	CYC	Legal

Step 1 – Aims and intended outcomes

<p>1.1</p>	<p>What is the purpose of the proposal? Please explain your proposal in Plain English avoiding acronyms and jargon.</p>
	<p>The proposal aims to make changes to City of York Council’s pavement café licensing guidance and process. The revised guidance will be used to assess applications for pavement cafes in York for licences issued under the Business and Planning Act 2020 and starting in January 2023.</p> <p>The current guidance and process (see here: www.york.gov.uk/PavementCafeLicences) were introduced in 2020, when the Business and Planning Act created a temporary fast-track licensing regime for pavement cafés set out on the adopted highway, as part of the Government’s Covid recovery response.</p> <p>This temporary regime removed the need for pavement cafés to obtain planning permission. Licences issued under this fast-track process were initially only due to be valid for no longer than one year, but this has now been extended twice. At present, this temporary licensing regime is due to end in September 2023. It is however likely to be extended again as the Levelling-up and Regeneration Bill currently going through the parliamentary process, proposes to make this licensing regime permanent, with a few changes (more information available here: https://bills.parliament.uk/bills/3155).</p> <p>To ensure that the decision making on pavement cafes reflects the current situation (post Covid pandemic and restrictions) and the needs of all city centre users, the Council’s Executive approved a review of the existing licensing guidance in July 2022, requesting that a report be brought to Executive in November 2022, on the outcome of the consultation, with the updated guidance to be considered at that meeting to take effect in January 2023 if approved (see here: https://democracy.york.gov.uk/ieDecisionDetails.aspx?ID=6601).</p> <p>The proposed changes (recommended options) are as follows:</p> <ul style="list-style-type: none"> • The revised licensing guidance will only allow pavement cafés to be licensed on footways (under the Business and Planning Act) where a 1.5m width remains for people to get past (width increased to 2m

in high footfall areas, for example busy junctions, near bus stops, etc). In footstreets with access level between footways and carriageway (for example Coney Street), licences may be issued for pavement cafes to cover the full width of the footway;;

- Set out the circumstances in which pavement cafes can be licensed using on street parking bays;
- Update barriers requirements and specifications set out in the guidance document so that they are in line with BS 8300-1:2018;
- Increase available width for access to licensed area and premises from 1.2m to 1.5m to enable wheelchair access (as per Inclusive Mobility guidance);
- Change the enforcement process to reduce notices before enforcement action is taken from 3 to 2 notices;
- Reintroduce of a £100 charge per licence;
- Provide additional information to licence holders on the design and set up of their pavement cafe area and information on hospitality venues' duties under the Equality Act;
- Provide information about pavement cafes on the Council website for users who want to plan in advance (location, hours of operation, etc);
- Set up a regular panel for York groups and communities to provide feedback on their lived experience of pavement cafes in York; and
- Require the named licence holder to have completed the ACT Awareness E-learning course and provide additional information to licence holders on the Protect Duty.

1.2	Are there any external considerations? (Legislation/government directive/codes of practice etc.)
	<p>Business and Planning Act 2020 and associated regulations (https://www.legislation.gov.uk/ukpga/2020/16/contents/enacted)</p> <p>Pavement licences: guidance - Guidance to accompany pavement licensing introduced in the Business and Planning Act 2020 (https://www.gov.uk/government/publications/pavement-licences-draft-guidance?utm_source=389e4313-7f82-42d6-bf67-53d5ec467b01&utm_medium=email&utm_campaign=govuk-notifications&utm_content=immediate)</p> <p>Levelling-up and Regeneration Bill (https://bills.parliament.uk/bills/3155)</p> <p>Equality Act 2010 and associated guidance including on the Public Sector Equality Duty (www.gov.uk/guidance/equality-act-2010-guidance)</p> <p>Inclusive mobility: making transport accessible for passengers and pedestrians (www.gov.uk/government/publications/inclusive-mobility-making-transport-accessible-for-passengers-and-pedestrians)</p> <p>BS 8300-1:2018 Design of an accessible and inclusive built environment</p> <p>PAS 6463:2022 Design for the mind. Neurodiversity and the built environment</p> <p>Government information on the Protect Duty (www.gov.uk/government/consultations/protect-duty)</p>
1.3	Who are the stakeholders and what are their interests?
	<p>All highway users (residents and visitors), including people with protected characteristics</p> <p>Hospitality businesses which hold a pavement café licence or may apply in the future and their staff and customers</p> <p>Businesses and residents in areas where pavement café licences are issued</p>

<p>1.4</p>	<p>What results/outcomes do we want to achieve and for whom? This section should explain what outcomes you want to achieve for service users, staff and/or the wider community. Demonstrate how the proposal links to the Council Plan (2019- 2023) and other corporate strategies and plans.</p>
	<p>The current pavement cafe licensing guidance and process were developed and implemented under emergency legislation, in response to Covid. As the city has returned to more normal post Covid operation, the impact of the temporary pavement cafes on access issues has become more apparent. Whilst it is likely pavement cafes are here to stay in some form in the future, this is no longer as part of an emergency response. Therefore, a review of the guidance supporting licensing decisions is necessary to determine when cafes are acceptable, recognising and limiting the impact they have on access.</p> <p>The proposals link to the following key outcomes of the Council Plan 2019-23:</p> <ul style="list-style-type: none"> • good health and wellbeing • well paid jobs and an inclusive economy • an open and effective council <p>The proposals also relate to the Council’s 10 year vision of the city centre, presented in “My City Centre Vision” (available here: www.york.gov.uk/downloads/file/7352/my-city-centre-york-vision). The vision sets out a number of ambitions for the future of the City Centre, including creating a family friendly midweek early evening economy, spreading events across the City Centre, and encouraging the outdoor café culture that has emerged during the pandemic in the footstreet areas.</p>

Step 2 – Gathering the information and feedback

2.1	<p>What sources of data, evidence and consultation feedback do we have to help us understand the impact of the proposal on equality rights and human rights? Please consider a range of sources, including: consultation exercises, surveys, feedback from staff, stakeholders, participants, research reports, the views of equality groups, as well your own experience of working in this area etc.</p>
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Source of data/supporting evidence	Reason for using
Feedback received through the existing licensing process	The licensing team has received considerable amounts of feedback from a wide range of people since the temporary licensing regime was first put in place in 2020. This includes feedback from people with protected characteristics or groups representing such communities. This feedback has been used to inform the proposals.
Evidence gathered by the access consultants for this review (see Annex A)	The consultants undertook a site visit and organised two panel discussions with disabled people, which informed their recommendations. This is presented in Annex A.
Research papers, published evidence and news items on the impact of cafes and street furniture on accessibility	<p>Research and evidence available online, including publications such as:</p> <ul style="list-style-type: none"> • “Who put that there! The barriers to blind and partially sighted people getting out and about”, RNIB • “Evaluating the impact of the introduction of pavement café licensing on the mobility of disabled people and older people in Northern Ireland”, IMTAC • UK Disability Survey research report, June 2021

Source of data/supporting evidence	Reason for using
Census and ONS data	Various datasets and reports are available on transport, access and disability, including the recent “Disabled people’s access to products and services, Great Britain: February to March 2022”.
My City Centre consultation	A wide-ranging consultation and engagement exercise was carried out to develop the vision. Information available here: www.york.gov.uk/city-centre-york-6/city-centre-york-youve-told-us-far and reports published with the 18/11/2021 Executive decision to adopt the “My City Centre Strategic Vision”, for example, Annex 4, page 29 (https://democracy.york.gov.uk/ieDecisionDetails.aspx?AllId=60466)

Step 3 – Gaps in data and knowledge

3.1	What are the main gaps in information and understanding of the impact of your proposal? Please indicate how any gaps will be dealt with.	
Gaps in data or knowledge	Action to deal with this	
Consideration of Equality Duty within the hospitality sector (e.g. for access to premises and services)	Further engagement with businesses through the licensing process (additional information to be provided through this proposal) and with the CYC Access officer	

Step 4 – Analysing the impacts or effects.

4.1	Please consider what the evidence tells you about the likely impact (positive or negative) on people sharing a protected characteristic, i.e. how significant could the impacts be if we did not make any adjustments? Remember the duty is also positive – so please identify where the proposal offers opportunities to promote equality and/or foster good relations.
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Equality Groups and Human Rights	Key Findings/Impacts	Positive (+) Negative (-) Neutral (0)	High (H) Medium (M) Low (L)
Age	<p>Impacts identified for older people are similar to those described under the Disability category below. This is because older people are more likely to live with one or more health condition or illness reducing their ability to carry out day-to-day activities.</p> <p>For children, the impacts identified are similar to those identified under the Disability category below, when considering access for small children and their carers using prams and/or pushchairs (where dropped kerbs or raised crossing are required or preferred).</p>	Some negative impacts identified Limited positive impacts	Medium
Disability	Where pavement cafes are licensed on part of the footway, pedestrian and wheelchair access is restricted to the remaining available corridor on the footway (generally 1.5m wide, in compliance with Inclusive Mobility). This can result in delays for users having to wait to get past an area of	Some negative impacts identified Limited	Medium

Equality Groups and Human Rights	Key Findings/Impacts	Positive (+) Negative (-) Neutral (0)	High (H) Medium (M) Low (L)
	<p>restricted width as a wheelchair user and a non-wheelchair using person side-by-side need 1.5m width.</p> <p>Where pavement cafes have been licensed to cover the whole width of the footway under the existing guidance (in footstreets and restricted vehicular access streets), users have to travel on the carriageway or around the licensed area if they want to remain on the footway. This means that they have to come up and down kerbs in streets which do not offer surface level access.</p> <p>For users who require dropped kerbs or raised crossings to be able to travel between the footway and the carriageway, this may mean having to retrace the route taken to find a suitable access point. In some cases, it may be difficult for wheelchair users or mobility aid users to gain access to some parts of the footway or some premises where there is no suitable dropped kerb or raised crossing point nearby. This has an impact on people with mobility impairments.</p> <p>The proposed changes to the guidance under Option 1a aim to improve this situation by requiring 1.5m width to remain available on footways (with the exception of pedestrianised streets where access between the footways and carriageway is level e.g. Coney Street). This means that the impact on people using wheelchair and mobility aids will be reduced as they will be able to remain on the footway to get past a</p>	positive impacts	

Equality Groups and Human Rights	Key Findings/Impacts	Positive (+) Negative (-) Neutral (0)	High (H) Medium (M) Low (L)
	<p>pavement café area and access premises on the same side of the street. Wheelchair and mobility aid users may still be delayed on their journey as they may have to wait to get past a licensed area where the available width of the footway is reduced to 1.5m</p> <p>The introduction of pavement cafes has an impact on people who live with a visual impairment as they have to navigate around the pavement café areas. Where areas are not set up correctly, this can result in loss of confidence and injury as visually impaired users may wander into a pavement café area without being aware that it is there. This is why barriers are required and need to be set up correctly.</p> <p>The need to travel on carriageway in pedestrianised or restricted traffic streets can also intimidate some users as some limited vehicular access is retained in those streets. Although the number of vehicles is very low and drivers are aware of the restrictions and the pedestrianised character of the streets, this can still be a stressful experience for some non-motorised highway users. This is especially relevant for restricted traffic streets where vehicular access rights remain “for access”, such as Fossgate. Cycling is also permitted one way on Fossgate.</p>		

Equality Groups and Human Rights	Key Findings/Impacts	Positive (+) Negative (-) Neutral (0)	High (H) Medium (M) Low (L)
	<p>Option 1a aims to mitigate this impact to some extent by retaining a 1.5m corridor on footways (with the exception of level access pedestrianised streets).</p> <p>The existing guidance requires the café areas to be delineated by barriers, but this was not precise enough and has been difficult to implement and enforce in practice. The recommended option (Option 2a) aims to clarify the requirements for barriers and bring them in line with BS 8300-1:2018 “Design of an accessible and inclusive built environment”. This should make it clearer for licence holders (with additional information and support also proposed under Option 2a) and enable the Council to take enforcement action when required (this is strengthened in Option 2a). This will also be informed by feedback received from the Panel proposed under Option 2c.</p> <p>Some users may find it difficult to navigate the streets with pavement cafes due to:</p> <ul style="list-style-type: none"> • The variable nature of the changes they bring (licensed areas can differ widely between venues and the set up can change daily as licence holders can decide not to use their café area on some days for example); • The need to travel around the café areas or on the carriageway (in pedestrianised streets with level access); 		

Equality Groups and Human Rights	Key Findings/Impacts	Positive (+) Negative (-) Neutral (0)	High (H) Medium (M) Low (L)
	<ul style="list-style-type: none"> The introduction of high contrasts barriers, umbrellas and furniture, etc. <p>This is especially relevant for people who live with conditions which affect their learning, understanding, or concentrating abilities, or their memory. The proposal aims to improve consistency between pavement cafes to some extent, through the use of BS 8300 compliant barriers.</p> <p>Option 2b also proposes to provide more information about pavement cafés (location, times of operation, etc) on the Council website for people who need or prefer to plan their journey in advance.</p> <p>Some disabled people have noted that pavement cafes have helped them access services as they provide outdoor space, which is considered safer for people with specific health conditions, such as conditions affecting the immune system.</p> <p>For some venues, which were/are not accessible (for example due to a stepped entrance), the provision of a pavement café area has resulted in their hospitality offer becoming available to wheelchair and mobility aid users in the pavement café area.</p> <p>An issue regularly raised by disabled users is the accessibility of the pavement café area itself and of the associated hospitality venue. Although this is an issue for</p>		

Equality Groups and Human Rights	Key Findings/Impacts	Positive (+) Negative (-) Neutral (0)	High (H) Medium (M) Low (L)
	businesses to consider and address, the proposals aim to provide additional information to businesses on their duties under the Equality Act (Option 2a).		
Gender	No differential impact identified.		
Gender Reassignment	No differential impact identified.		
Marriage and civil partnership	No differential impact identified.		
Pregnancy and maternity	Impacts identified for pregnancy and maternity are similar to those described under the Disability category above. This is because health conditions reducing the ability to carry out day-to-day activities are more likely to arise during pregnancy and parents of young children are more likely to be using prams and pushchairs.	Some negative impacts identified Limited positive impacts	Medium
Race	No differential impact identified.		
Religion and belief	No differential impact identified.		
Sexual orientation	No differential impact identified.		

Equality Groups and Human Rights	Key Findings/Impacts	Positive (+) Negative (-) Neutral (0)	High (H) Medium (M) Low (L)
Other Socio-economic groups including:	Could other socio-economic groups be affected e.g. carers, ex-offenders, low incomes?		
Carer	Impacts identified for carers are similar to those described under the Disability category above.	Some negative impacts identified Limited positive impacts	Medium
Low income groups	No differential impact identified.		
Veterans, Armed Forces Community	No differential impact identified.		
Other	No differential impact identified.		
Impact on human rights:			
Article 8: Respect for your private and family life & Article 14:	Private life includes a right to participate in essential economic, social, cultural and leisure activities. The feedback received from disabled groups shows that although some people have been able to use the outdoor	Some negative impacts identified	Medium

Equality Groups and Human Rights	Key Findings/Impacts	Positive (+) Negative (-) Neutral (0)	High (H) Medium (M) Low (L)
Protection from discrimination	<p>space provided by pavement cafes as it has provided a safer and more accessible way to access hospitality venues in some cases, others have found that pavement cafes have made it more difficult for them to participate in essential activities in the city centre due to the need to navigate around the licensed areas.</p> <p>Article 14 requires that all of the rights and freedoms set out in the Act must be protected and applied without discrimination.</p> <p>As stated above, the recommended options set out in the main report aim to mitigate these impacts by retaining a 1.5m corridor on footways (with the exception of pedestrianised streets with level access), clarify the guidance and provide additional information to licence holders and highway users and improve on the current consultation process by creating an established feedback process.</p>	Limited positive impacts	

Use the following guidance to inform your responses:

Indicate:

- Where you think that the proposal could have a POSITIVE impact on any of the equality groups like promoting equality and equal opportunities or improving relations within equality groups

- Where you think that the proposal could have a **NEGATIVE** impact on any of the equality groups, i.e. it could disadvantage them
- Where you think that this proposal has a **NEUTRAL** effect on any of the equality groups listed below i.e. it has no effect currently on equality groups.

It is important to remember that a proposal may be highly relevant to one aspect of equality and not relevant to another.

<p>High impact (The proposal or process is very equality relevant)</p>	<p>There is significant potential for or evidence of adverse impact The proposal is institution wide or public facing The proposal has consequences for or affects significant numbers of people The proposal has the potential to make a significant contribution to promoting equality and the exercise of human rights.</p>
<p>Medium impact (The proposal or process is somewhat equality relevant)</p>	<p>There is some evidence to suggest potential for or evidence of adverse impact The proposal is institution wide or across services, but mainly internal The proposal has consequences for or affects some people The proposal has the potential to make a contribution to promoting equality and the exercise of human rights</p>
<p>Low impact (The proposal or process might be equality relevant)</p>	<p>There is little evidence to suggest that the proposal could result in adverse impact The proposal operates in a limited way The proposal has consequences for or affects few people The proposal may have the potential to contribute to promoting equality and the exercise of human rights</p>

Step 5 - Mitigating adverse impacts and maximising positive impacts

5.1	Based on your findings, explain ways you plan to mitigate any unlawful prohibited conduct or unwanted adverse impact. Where positive impacts have been identified, what is been done to optimise opportunities to advance equality or foster good relations?
<p>The proposal aims to implement the following mitigation measures</p> <ul style="list-style-type: none">• Option 1a clarifies when pavement cafes can be installed on footways and introduces the requirement for a 1.5m corridor to remain free of obstructions on footways, with the exception of footways on pedestrianised streets with level access;• Option 2a proposes changes to the licensing guidance document to introduce updated requirements for barriers (based on BS 8300), improve access to the premises, tighten the enforcement process, and provide additional information on the design and set up of the pavement cafes and hospitality venues' duties under the Equality Act;• Option 2b proposes to provide more information on pavement cafés on the Council's website, for users who want to plan their journey in advance;• Option 2c proposes to set up a regular panel for York groups and communities to provide feedback on their lived experience of pavement cafes, to inform licence reviews and enforcement action where required.	

Step 6 – Recommendations and conclusions of the assessment

6.1	<p>Having considered the potential or actual impacts you should be in a position to make an informed judgement on what should be done. In all cases, document your reasoning that justifies your decision. There are four main options you can take:</p>	
<ul style="list-style-type: none"> - No major change to the proposal – the EIA demonstrates the proposal is robust. There is no potential for unlawful discrimination or adverse impact and you have taken all opportunities to advance equality and foster good relations, subject to continuing monitor and review. - Adjust the proposal – the EIA identifies potential problems or missed opportunities. This involves taking steps to remove any barriers, to better advance quality or to foster good relations. - Continue with the proposal (despite the potential for adverse impact) – you should clearly set out the justifications for doing this and how you believe the decision is compatible with our obligations under the duty. - Stop and remove the proposal – if there are adverse effects that are not justified and cannot be mitigated, you should consider stopping the proposal altogether. If a proposal leads to unlawful discrimination it should be removed or changed. <p>Important: If there are any adverse impacts you cannot mitigate, please provide a compelling reason in the justification column.</p>		
Option selected	Conclusions/justification	
Continue with the proposal	<p>This assessment has identified some limited positive impacts and some negative impacts for pavement cafes, when considering the recommended options, on people with the following protected characteristics: Age (older people and young children), Disability, Pregnancy and maternity, and Carers. It has also identified some negative impacts on the following human rights: Article 8: Respect for your private and family life & Article 14: Protection from discrimination.</p>	

The process to authorise pavement cafes was changed temporarily by Government during the Covid pandemic to enable people to socialise safely outside and to support the economic recovery.

The Council's city centre strategy "My City Centre Vision" was adopted by the Executive on 18 November 2021 (<https://democracy.york.gov.uk/ieDecisionDetails.aspx?AllId=60466>).

The strategy's key objectives include *"Support outdoor eating and café culture in the city centre"*, which states *"The expansion of pavement cafés have been an essential part of the sector's response to lockdown. We will develop a permanent approach to outdoor eating & Café culture which can create a vibrant atmosphere whilst managing accessibility and amenity impacts and maintaining a high-quality city centre environment"*.

By reviewing the existing pavement café licensing guidance and adopting the recommended options in this proposal, the Council aims to mitigate some of the negative impacts of pavement cafes whilst enabling the development of the café culture described in the Council's "My City Centre Vision" where appropriate.

Step 7 – Summary of agreed actions resulting from the assessment

7.1	What action, by whom, will be undertaken as a result of the impact assessment.		
Impact/issue	Action to be taken	Person responsible	Timescale
Access for people with the following protected characteristics: Age (older people and young children), Disability, Pregnancy and maternity, and Carers	As per recommended options in the main report	Dave Atkinson	Dec 2022/January 2023 for updated guidance and its implementation for new applications

Step 8 - Monitor, review and improve

8. 1	How will the impact of your proposal be monitored and improved upon going forward? Consider how will you identify the impact of activities on protected characteristics and other marginalised groups going forward? How will any learning and enhancements be capitalised on and embedded?
	<p>Feedback and information received through the licensing process will continue to be used to inform decisions.</p> <p>Additionally, Option 2c aims to set up a regular panel for York groups and communities to provide feedback on their lived experience of pavement cafes. This feedback would then inform licence reviews and enforcement action where required. Recruitment and management of the panel to be linked to the Access Officer action included in the City Centre Action Plan.</p>

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