

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

1.1	What is the purpose of the proposal? Please explain your proposal in Plain English avoiding acronyms and jargon.
	<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>