

Meeting:	Decision Session - Executive Member for Transport
Meeting date:	19 July 2024
Report of:	James Gilchrist, Director of Transport, Environment and Planning
Portfolio of:	Cllr Ravilious, Executive Member for Transport

Decision Report: Review of pavement café licensing process and guidance

Subject of Report

1. This report presents options to review the Council's pavement café licensing process and guidance following the commencement of the pavement licensing provisions laid out in the Levelling Up and Regeneration Act 2023.
2. The provisions included in the 2023 Act introduce a permanent pavement licensing regime to replace the temporary provisions introduced by the Business and Planning Act 2020.
3. The new legislation retains most of the features of the temporary regime but introduces some changes and is supported by updated government guidance.
4. The differences between the temporary regime and the new permanent regime, including options for the local authority to tailor the permanent regime to their specific circumstances are presented in this report, with recommendations on changes to be made to the local process and guidance.
5. This report considers options to address the issue of pavement cafes operating on privately maintained highways.
6. This report also acknowledges and considers options to address the concerns raised by a petition titled "*Support Outdoor Dining in York*", which was presented to Full Council on 21 March 2024.

7. The petition was signed by 282 people and asks for a review of how pavement cafes can operate in the city centre following the changes to pavement café licences made in areas of the city centre where Blue Badge vehicular access has been reinstated. Options to address these concerns are presented in the report.
8. This report seeks the views of the Executive Member for Transport on changes to be made to the Council's pavement café licensing process and guidance before these changes can be presented to the Licensing Committee for approval.
9. The approval of the Licensing Committee is required to change the guidance following the Executive decision (on 22 November 2022, then approved by Full Council on 15 December 2022), which adopted the current pavement café guidance and added "*the Policy for Pavement Cafes under the Business and Planning Act 2020*" to the list of functions of the Licensing Committee.

Benefits and Challenges

10. The report aims to:
 - a) Implement the changes to pavement café licensing required due to the new permanent regime coming into force;
 - b) Continue to implement local guidance on available footway width where pavement cafes are only licensed where suitable width remains to enable highway users, including disabled people, to get past, whilst permitting cafes to use the highway where possible;
 - c) Regularise pavement cafes and other stalls (or similar uses) currently using privately maintained highways,
 - d) Continue to prioritise parking and access for vehicles carrying Blue Badge holders in the two city centre access corridors, whilst recognising that this has a negative impact on businesses on these streets as most are now unable to obtain a pavement café licence.

Policy Basis for Decision

11. The proposals included in this report relate to the Council Plan for 2023-27 commitments, specifically:

- a) Equalities and Human Rights, which states *“We will create opportunities for all, providing equal opportunity and balancing the human rights of everyone to ensure residents and visitors alike can benefit from the city and its strengths”*; and
 - b) Health, which states: *“We will improve health and wellbeing and reduce health inequalities, taking a Health in All Policies approach, with good education, jobs, travel, housing, better access to health and social care services and environmental sustainability. We will achieve better outcomes by targeting areas of deprivation, aiming to level opportunity across the city”*.
12. They also relate to the Council’s “My City Centre Strategy” (2021-2031) which aims to *“support outdoor eating and café culture in the city centre”* (objective 3C) and to *“improve accessibility through a wide range of measures including more dropped kerbs, improved surfaces and seating and better facilities for disabled people”* (objective 6D).
13. At the national level, they relate to the following legislation, policies and guidance:
- a) Levelling Up and Regeneration Act 2023, Business and Planning Act 2020, Part 7A of the Highways Act 1980; Equality Act 2010;
 - b) Pavement licences: guidance published by the Department for Levelling Up, Housing & Communities (available here: www.gov.uk/government/publications/pavement-licences-guidance/pavement-licences-guidance);
 - c) Inclusive mobility: making transport accessible for passengers and pedestrians, by the Department for Transport (available here: www.gov.uk/government/publications/inclusive-mobility-making-transport-accessible-for-passengers-and-pedestrians).

Financial Strategy Implications

14. The financial implications of the recommended options are identified as follows:

- a) The increased fees for new and renewal applications will enable the Council to recover a higher proportion of the costs associated with reviewing, issuing and monitoring pavement café licences in York. They will not enable full cost recovery but have been set at the maximum permitted by the legislation to improve cost recovery;
 - b) Regularising the pavement cafes and stalls (and similar uses) using privately maintained highways will have a mixed financial impact on the Council as, although the licensing charges should cover most of the costs of issuing the licences and monitoring the licensed areas, where applications to stop the highway under Section 116 of the Highways Act are required, this could have a negative financial impact on the Council and some costs may need to be funded from current revenue budgets within the Transport team if costs are not recovered from the landowner;
 - c) The continued application of the 1.5m available width rule will enable current licence holders to continue operating. Where licences were revoked to enable Blue Badge vehicular access and parking, new licences will generally not be granted, potentially resulting in a loss of income for the Council.
15. The legislation does not permit pavement cafe licence fees to be linked to the number of tables and chairs or to the size of the area covered by the licence. Some businesses therefore get much higher returns from their investment in a pavement café licence, where it enables them to use a large area (for example on Parliament Square).
16. The financial impact on businesses is mixed. Where businesses are able to operate with a pavement café licence, business owners/managers generally state that this helps with their business's revenue and viability. Where licences have been revoked or licence areas reduced, businesses have stated that this has had a significant impact on their revenue. Where businesses have historically operated without licences on privately maintained highways, regularising the situation through licensing will have a financial impact on businesses (depending on the cost of the licences, the cost of equipment they will need to purchase to conform to the pavement café licensing guidance, or the stopping up costs passed on to the businesses – see options).

Recommendation and Reasons

17. The Executive Member is recommended to:

- a) Note the legislative changes to the pavement café licensing regime and the budget decision made by Full Council in February 2024 (concerning the pavement café licence fees and licence duration under the permanent regime);
- b) Recommend the following changes to the CYC local guidance for approval by the Licensing Committee:
 - i. Continue to implement the local guidance where a minimum available width of 1.5m is generally required on footways (with an exception for level surface streets in the footstreets area, where cafes can be licensed to occupy the full width of a footway during pedestrianised hours);
 - ii. Applications to be treated as new licence applications (£500) where there is a different licence holder, different premises and/or different terms;
 - iii. Update the guidance to state that where internal seating is provided, toilets should be available for customers. Exceptions can be made for premises which serve drinks and food as take away premises, without internal seating and without the ability to provide customer toilets;

Reasons: To ensure that the Council's pavement café licensing guidance is in line with the new legislation and to clarify some aspects of the guidance where required.

- c) Ask officers to work with businesses to regularise their situation, where cafes and/or other structures have historically been used/built in areas of privately maintained highways without a licence (or without a stopping up order). Where a pavement café has been in use historically and a licence can be issued for the area, the renewal fee will be applied.

Reasons: To regularise furniture and structures which have historically been used/built in privately maintained highway areas so that all businesses are treated consistently and in line with the permanent pavement café licensing regime. To ensure

that furniture and other objects placed in the highway do not cause an obstruction or hazard to pedestrians and that pavement cafes are set out according to the Council's guidance to retain the required highway widths for people to be able to walk past, including people using mobility aids and pushchairs.

- d) Note the concerns raised by the petition but decline the request to reinstate pavement cafes on the corridors where Blue Badge vehicular access is permitted and where the highway space is required for Blue Badge vehicles to access safely and park, as this would conflict with Blue Badge holders' access requirements.

Reasons: to ensure that Blue Badge holders can safely access the footstreets using the two designated corridors and that pedestrians on the corridors where Blue Badge access is permitted are able to use the footways to enable authorised vehicles to get past safely.

Background

18. The current pavement café licensing process and guidance was initially implemented as a temporary scheme under emergency government legislation (Business and Planning Act 2020) during the Covid pandemic. This emergency legislation deregulated the process for pavement cafes and removed the requirement for planning permission, which ordinarily was used to assess proposals and gather feedback from interested parties through the planning consultation process. Where planning consent was granted, annual licences were then issued by the highway authority under Part VIIA of the Highways Act 1980.
19. The Business and Planning Act 2020 removed the requirement for planning permission for removable furniture temporarily placed in the highway adjacent to hospitality sector premises (such as cafes, restaurants, and bars). The Act streamlined the process by reducing the consultation and determination periods, making it easier and cheaper for businesses to obtain pavement café licences.
20. The Council's licensing process and guidance was last updated in 2022 through an Executive decision (22 November 2022, available here, under item 48: <https://democracy.york.gov.uk/ieListDocuments.aspx?CId=733&MIId=13292>) followed by Full Council approval on 15 December 2022

(available here:

<https://democracy.york.gov.uk/ieListDocuments.aspx?CId=331&MId=13697>).

New legislation and updated government guidance

21. The Levelling Up and Regeneration Act 2023 introduced a permanent pavement licensing regime in England to replace the temporary provisions introduced by the Business and Planning Act 2020. The pavement licensing provisions laid out in the 2023 Act commenced on 31 March 2024.
22. As these provisions introduce some changes to the licensing regime and are accompanied by updated Government guidance (available here: www.gov.uk/government/publications/pavement-licences-guidance), the Council now needs to consider updates to its pavement café licensing process and guidance.
23. Key changes to be considered are:

- a) **Licence fees** – Local authorities are free to decide the level of pavement café application fees up to a cap which is set nationally. Under the temporary regime, the fees were capped at £100. The 2023 Act has increased the cap to £500 for first time applications and £350 for renewal applications. This increase in fee cap is intended to allow local authorities to recover the costs of processing, monitoring and enforcing licences.

Under the previous licensing regime, pre-Covid, applicants had to secure planning consent and then pay for an annual licence fee to cover the authority's costs. In York, the fee was set at £660/year.

The fees, set at £500 for first time applications and £350 for renewal applications, were approved by Full Council at the Budget meeting for 24/25 which took place on 22 February 2024 (additional information is available here, under item 80, the fees are set out in Annex 3:

<https://democracy.york.gov.uk/ieListDocuments.aspx?CId=733&MId=13934&Ver=4>).

- b) **Licence duration** – The 2023 Act enables local authorities to grant pavement licences for a length of their choosing up to a maximum of two years. The government's updated guidance encourages local authorities to grant businesses

the maximum two years unless there is a good reason to do otherwise.

Under the previous licensing regime, before Covid and under the temporary licensing regime, CYC granted licences for a maximum duration of one year.

The recommended approach is to continue with annual licences as this provides an opportunity to regularly review the pavement café licences against any issues or complaints which may have been identified/received, check that licence holders have the required insurance cover, and that they have undertaken up to date Counter Terrorism training.

Annual fees were approved by Full Council at the Budget meeting for 24/25 which took place on 22 February 2024 (additional information is available here, under item 80, the fees are set out in Annex 3:

<https://democracy.york.gov.uk/ieListDocuments.aspx?CId=733&MId=13934&Ver=4>).

- c) **Consultation and determination period** - The seven-day consultation and seven-day determination periods provided under the temporary regime, have been extended to 14 days for each. This is a legislative change and will be implemented automatically.
- d) **Enforcement** – The 2023 Act grants local authorities new enforcement powers. If furniture continues to be placed on the highway, in contravention of a notice served by the local authority, the authority may remove and store the furniture and refuse to return the furniture until the removal and storage costs have been paid. If the costs are not paid within three months of the notice being served, the authority can dispose of the furniture by sale or other means and retain the proceeds. This is a legislative change and will be implemented automatically.

The current CYC guidance states that up to two letters (notices) will be sent to licence holders 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. Once a licence is revoked, the furniture placed in the highway becomes an unauthorised obstruction with limited enforcement options available to the local authority under the Highways Act 1980.

Although the new enforcement powers are welcome, staff and storage resources will be required to remove and store the furniture without any guarantee of cost recovery. It is likely that these powers will therefore only be used where compliance has not been possible to achieve through discussions with the businesses and the furniture causes significant safety and/or accessibility issues for highway users.

- e) **Remaining available width for pedestrians** – The updated government guidance (Section 4.1) states that “*Section 4.2 of Inclusive Mobility sets out that footways and footpaths should be as wide as practicable, but under normal circumstances a width of 2000mm is the minimum that should be provided, as this allows enough space for two wheelchair users to pass, even if they are using larger electric mobility scooters. Local authorities should take a proportionate approach if this is not feasible due to physical constraints. A minimum width of 1500mm could be regarded as the minimum acceptable distance between two obstacles under most circumstances, as this should enable a wheelchair user and a walker to pass each other*”.

Current CYC guidance states that “*a 1.5 metres (1500mm) corridor needs to remain free of obstructions for people to get past the pavement café area. This will be increased to 2 metres (2000mm) in high footfall areas (for example at busy junctions or near bus stops)*”.

The recommended approach is to continue with the current local guidance where a minimum available width of 1.5m is required on footways (increased to 2m in some areas). The local guidance also provides an exception for level surface streets in the footstreets area, where cafes can be licensed to occupy the full width of a footway during pedestrianised hours.

- f) **Cumulative impact** - The updated government guidance states that authorities should be mindful of the cumulative impact of multiple pavement licences and the potential impact this could have on disabled pavement users.

The recommendation is to continue with the current approach where applications are considered in the order that they are received and validated (once all the required information has been submitted). As new applications are

received and validated in a street/area, officers consider the cumulative impact and the impact of licences on all highway users, including disabled people.

- g) **Permitted furniture** – The guidance clarifies that licences granted under this provision are exclusively for the use of removable furniture pertaining to the consumption of food and drinks, for example, tables and chairs. Other furniture, such as advertising boards, are not included.

The recommended approach is to continue with the existing local guidance as the current list of furniture included in the guidance matches that included in the revised legislation and national guidance.

24. In addition to these changes, two items which require further clarification in the updated guidance have been identified:

- a) **Definition of renewal versus new licence** – As noted in the section on Licence fees above, the 2023 Act has increased the fee cap to £500 for first time applications and £350 for renewal applications and Full Council has approved these fees on an annual basis for 2024/25.

The national guidance, when explaining transitional arrangements from the temporary to the permanent process, states: *“Businesses who have had a licence under the previous regime and are seeking a new licence should be treated as a renewal application if it is made by the licence-holder, it is in respect of the same premises and it is on the same terms as the expired licence”* (see Section 3.4, available here:

www.gov.uk/government/publications/pavement-licences-guidance/pavement-licences-guidance).

Based on this guidance, the recommended approach is to consider the following applications as new applications:

- Different licence holder;
 - Different premises;
 - Different terms, including change of area location, area size, furniture, hours/days of operation.
- b) **Provision of toilets** – Current CYC local guidance states *“Toilet facilities must be available for customers to use on the*

premises". In practice, some applicants have not been able to meet this requirement where they operate mainly as a take-away business (for example take away beverage stalls or shops such as bubble tea shops or take away food stalls).

The recommended option is therefore to update the guidance to state that where internal seating is provided (without the pavement café area), toilets should be available for customers. Exceptions can be made for premises which serve drinks and food as take away premises, without internal seating and without the ability to provide customer toilets.

Regularising pavement cafes, stalls, and similar uses on privately maintained highways

25. The areas which can be considered for a pavement café licence are defined in the Levelling Up and Regeneration Act 2023 and the Highways Act 1980. As the 2023 Act makes a permanent change to the pavement café licensing regime, it is now considered timely to address the issue activities which require licensing on privately maintained highways.
26. Pavement café areas can be licensed on a footway, a footpath, or a carriageway where traffic is restricted. These areas are generally adopted highways (maintained by the Council), but the process also applies to privately maintained highways.
27. The areas are defined in Section 115A of the Highways Act as follows and there is no distinction based on the maintenance status of the highway under consideration:
 - a) a highway in relation to which a pedestrian planning order is in force;
 - b) a restricted byway;
 - c) a bridleway;
 - d) a footpath (including a walkway);
 - e) a footway;
 - f) a subway;
 - g) a footbridge;

h) a highway of a description not mentioned in any of the preceding paragraphs of this definition whose use by vehicular traffic is prohibited by a traffic order but whose use by other traffic is not prohibited or restricted or regulated by such an order; and

i) a Local Act walkway.

28. Categories (e) and (h) above are the most common areas where licences are issued in York. Crown land or land maintained by Network Rail cannot be considered for pavement café licensing under this legislation.
29. In some areas of York, cafes and stalls have historically been set out on privately maintained highways because these areas were historically perceived as “private areas”. Some of these businesses applied for planning permission to install permanent furniture or structures, others secured planning permission to use the areas as pavement cafes (under the pre-Covid regime), with removable furniture. Others have used the areas historically, without any permissions or licences from the Council as the land was perceived as “private”.
30. Where these areas have generally been open to the public to pass and repass over many years, these areas will however generally have gained highway status.
31. This is because highways do not need to be maintained at public expense (also called adopted highways) to gain highway status. The most common way that rights of way come into existence is by presumed dedication. Long use by the public without challenge can constitute evidence that the landowner intended to dedicate the route as a public right of way. Presumed dedication can take place by common law or statute. Statute requires a period of at least 20 years uninterrupted use by the public (not necessarily the same people all the time) over a period of 20 years in the belief that that use was as of right. Common law dedication may require less time.
32. If furniture or stalls are placed on a highway without permission from the Council, they are likely to constitute an obstruction and the highway authority may need to remove them or ask the owner to remove them. Section 130(1) of the Highways Act 1980 places a duty on Highway Authorities to “*assert and protect the rights of the public to the use and enjoyment of any highway for which they are the highway authority*” and Section 130(3) places a duty on

Highway Authorities to “*prevent as far as possible the stopping up or obstruction*” of the highways for which they are responsible.

33. Part VIIA of the Highways Act 1980 however enables Councils to grant permissions for the use of objects or structures in the highway. This section of the Highways Act can be used to license stalls and other objects. Pavement cafes should be licensed under the Levelling Up and Regeneration Act 2023 in respect of highways listed in section 115A(1).
34. Key areas where this issue has been identified are Acomb Front Street and Bishopthorpe Road although other areas are likely to be affected across the city.

Petition – Pavement cafes and Blue Badge parking and access

35. A petition titled “Support Outdoor Dining in York” was presented to Full Council on 21 March 2024. The petition was signed by 282 people and asks for a review of how pavement cafes can operate in the city centre following the changes to pavement café licences made in areas of the city centre where Blue Badge vehicular access has been reinstated.
36. In October 2023, the Council’s Executive decided to reinstate vehicular access for Blue Badge holders on two city centre routes: Goodramgate to Colliergate (including Church Street) and Blake Street to Lendal.
37. This was informed by significant consultation, as presented in the report and summarised in Annex C (the report and supporting documents for this decision are available here: <https://democracy.york.gov.uk/ieDecisionDetails.aspx?ID=6951>).
38. The impact on pavement cafes on these routes was identified in Annex I (available here: <https://democracy.york.gov.uk/ieDecisionDetails.aspx?ID=6951>). At the time of the decision, the assessment of existing licences showed that café licences would need to be withdrawn or licensed areas reduced for 19 businesses as the space would be needed to accommodate Blue Badge parking and vehicular access on these routes.
39. The decision to reinstate vehicular access for Blue Badge holders in the city centre, including the impact on pavement cafes, was also considered by the Council’s Economy, Place and Transport

Scrutiny Committee in September 2023 (further information is available here:

<https://democracy.york.gov.uk/ieListDocuments.aspx?CId=1063&MId=14405>).

40. The removal and/or reduction of the pavement café licences on these two routes were required to ensure that Blue Badge holder vehicles could drive safely on the carriageway and to provide space for vehicles to be parked on street (Blue Badge holders can park on double yellow lines for up to 3 hours where they do not cause an obstruction).
41. Reintroducing pavement cafes on these corridors (as they were licensed before Blue Badge holder vehicular access was reinstated) would result in reduced on street parking capacity for Blue Badge holders.

Consultation Analysis

42. The most recent consultation related to pavement café licensing and accessibility issues was carried out by consultants Mima who were appointed as independent access consultants by the Council to carry out a series of workshops in March and May 2024 for York residents and city centre businesses. The aim of the research was to:
 - a) Understand what short-term improvements could be made to improve city centre access;
 - b) Review the process to reinstate Blue Badge holder access in the city centre and provide recommendations for improvement;
 - c) Identify longer term options to make the city centre more accessible.
43. Additional consultation feedback has been considered including: the Blue Badge Postcard Survey, results from the online Blue Badge access consultation Phase 1 and Phase 2, and data from the Local Transport Strategy consultation, as well as feedback from businesses (including the responses to the consultation carried out in 2022 when the licensing guidance was last updated).
44. There are clearly differences of opinion between some businesses and some highway users on what priority should be given to

pavement café licences versus clear carriageways and footways for people to travel on.

45. Feedback from Blue Badge holders and disabled people generally requested further vehicular access into the city centre and additional areas for vehicles carrying a Blue Badge to park. Many also requested more public seating and resting places (which may reduce the space available for pavement cafes).
46. The consultation responses highlighted that for disabled people pavement cafes can be a barrier when not implemented in an accessible manner. For example, they can impact visually impaired people navigating the space safely and can narrow pavement widths for wheelchair users and other mobility aid users.
47. In contrast, businesses highlighted that these spaces were important for business and generate an income particularly in the spring and summer months.

Options Analysis and Evidential Basis

48. This section considers the options available to the Executive Member in more detail. It does not consider the changes which are required due to the change in legislation (no options are available to the executive Member for these) and the changes which were agreed by Full Council (fee levels and licence duration).

Available footway width

49. The text included in the Government guidance on pavement café licensing has changed with the update to the guidance in April 2024. The updated guidance states: *“Section 4.2 of Inclusive Mobility sets out that footways and footpaths should be as wide as practicable, but under normal circumstances a width of 2000mm is the minimum that should be provided, as this allows enough space for two wheelchair users to pass, even if they are using larger electric mobility scooters. Local authorities should take a proportionate approach if this is not feasible due to physical constraints. A minimum width of 1500mm could be regarded as the minimum acceptable distance between two obstacles under most circumstances, as this should enable a wheelchair user and a walker to pass each other”*.
50. The recommended option is to continue with the approach set out in the Council local guidance where a remaining available width of

1500mm is always required (except in footstreets where the carriageway and footways are level during pedestrianised hours) and this is increased to 2000mm in specific areas (for example near a high footfall junction).

51. This is the recommended option as it has been in place in York since 2023 (following the Full Council decision in December 2022) and has generally worked well, enabling a significant number of licences to be issued (in line with the objectives of the Council's "My City Centre Strategy"), whilst enabling disabled people and other highway users to access streets and premises as required. 73 premises currently hold a pavement café licence in York (the majority of these are in the city centre).
52. Alternatively, the Executive Member could decide to adopt a stricter approach to the implementation of Inclusive Mobility guidance and require a minimum available footway width of 2000mm in most cases. As most of the city centre streets have relatively narrow footways, this would mean that many of the businesses currently licensed to use part of the footway would not be able to have a licence any longer. An initial assessment of existing licences shows that approx. 20 pavement café licences would need to be revoked and 11 licensed areas would need to be reduced.

New/renewal applications

53. The Government guidance indicates that applications should be treated as new licence applications (£500 cost) where there is a different licence holder, different premises and/or different terms.
54. The recommended option is to directly apply this guidance as any changes in these characteristics require the Council to undertake additional checks (for example on insurance cover, counter-terrorism training, and suitability of the area requested or furniture proposed). As the cost of a new licence is higher than a renewal, this means that the Council will be closer to achieving cost recovery.
55. The Executive Member could ask officers to review the list of changes which result in an application being treated as a new application to reduce the cost to the businesses (for example, where only the name of the licence holder is changing) but this would reduce cost recovery for the Council.

Toilet provision

56. The current local guidance document requires licence holders to provide toilets for their customers. In recent months, officers have received applications for pavement cafes from premises which do not have customer toilets currently as they operate mainly as take away premises (for example bubble tea shops and food trailers). These premises can be eligible for a pavement café licence under the current legislation but may not be able to provide customer toilets.
57. The recommended option is therefore to amend the local guidance document to state that where internal seating is provided, toilets should be available for customers but that exceptions can be made for premises which serve drinks and food as take away premises, without internal seating and do not have the ability to provide customer toilets.
58. The recommended option enables officers reviewing licence applications to ensure that customer toilets are provided wherever possible but also provide some flexibility where this is not possible.
59. Alternatively, the Executive member could decide to keep the current requirement for customer toilets to be provided for any premises with a pavement café licence. This would preclude some of the businesses from being granted a pavement café licence.

Regularising pavement cafes, stalls, and similar uses on privately maintained highways

60. When considering pavement cafes, stall and similar uses which have historically taken place without any licences in place in respect of highways listed in section 115A Highways Act 1980, the following options have been identified. The recommended option is to regularise
 - a) Do nothing – Leave these areas to be managed privately and manage pavement cafes in the adopted highway only. This is not a recommended option as the Council is under a legal duty to assert and protect the rights of the public to the use of all highways for which it is the highway authority and to prevent, as far as possible, the stopping up or obstruction of those highways. It may also result in issues for highway users with protected characteristics under the Equality Act 2010 as they may not be able to get safely past pavement café areas and/or stalls if they are not set up correctly. There

would be no direct financial impact for the businesses operating without licences as they would not be charged for a licence by the Council. There may be some increased financial liability risks for these businesses however as their insurance may not cover the use of the external areas on the highway without a licence and the Council may have to remove or ask them to remove their furniture/stalls at short notice if they are dangerous or obstructing highway users.

- b) Regularise the situation – Letters could be sent to all the premises where this situation has been identified. The letters would explain the situation and invite the premises' owners/managers to present any evidence they might have that the area under consideration is not subject to highway rights. Where highway rights cannot be refuted, the letter would offer the following options:
- i. For permanent structures – The businesses could be invited to submit an application to stop up the highway (i.e. extinguish the public right of way). This could be done through the planning process (under Part X of the Town and Country Planning Act 1990) for new proposals when a valid planning permission requires the highway to be stopped up. For areas which are already being used, the stopping up process in the Magistrates' Court described under Section 116 of the Highways Act will be required. Only the Highway Authority can make an application under section 116 and it will only be able to support such an application if it can be demonstrated that "*the highway is unnecessary*". This will require the support of the Parish Council (where applicable, as they have a right of veto) and wayleaves or diversions will have to be agreed with statutory undertakers if utilities are present in the area(s) to be stopped up. Costs would generally be borne by the applicant, but the Council may agree to bear some of the costs where planning applications have been granted for permanent structures historically, without the applicant having been made aware of the need to stop up the highway. As stopping up processes can be lengthy, the licensing options described below may need to be implemented until a decision is made on the stopping up application.

- ii. For permanent structures and non-permanent items which are not pavement cafes (e.g. grocer's display, stalls, etc) – Where they are considered in line with the Council's pavement café guidance and/or other Council policies and national standards and guidance, the areas could be licensed under Section 115E of the Highways Act. This would be subject to an annual licensing fee, currently set at £800/year. For the Council to be able to issue a licence under Section 115E of the Highways Act 1980, the consent of the frontagers with an interest is required (this usually includes any owners or occupiers of the premises, including anyone living on the first floor for example). This would be for the applicant to negotiate with the relevant parties. For permanent structures, statutory undertakers may also need to be consulted if the structures are likely to have an impact on or restrict access to their apparatus. Where areas have been used historically and the businesses were not made aware of the need for a licence, the Council may decide to reduce the fee for the first year.
- iii. For removable furniture – The businesses will need to apply for a pavement café licence under the Levelling Up and Regeneration Act 2023. This will be granted if they meet the criteria set out here: www.york.gov.uk/highway-licences/pavement-caf%C3%A9-licence-guidance-process/2. This would be subject to an annual fee, currently set at £500/year for new licences and £350/year for renewals. Where areas have been used historically and the businesses were not made aware of the need for a licence or where a licence for an area similar to that currently in use can be issued, the Council would apply the renewal fee instead of the new licence fee.
- iv. Where an area is considered a highway (and no evidence has been provided to the contrary) and the business using the area for a pavement café, stall or similar does not apply for a licence or stopping up order, the Council would need to consider enforcement action under its duty to protect highway rights as set out in Section 130 of the Highways Act 1980.

Petition – Pavement cafes and Blue Badge parking and access

61. The recommended option is to decline the request to reinstate pavement cafes on the corridors where Blue Badge vehicular access is permitted as this would conflict with Blue Badge holders' access and parking needs.
62. This is because the impact on pavement cafes was considered by the Executive when the decision was made to restore vehicular access for Blue Badge holders through city centre hostile vehicle measures. Executive recognised then that, on the two access corridors, licences would only be granted where blue badge parking isn't possible as the objective is to allow blue badge parking in the pedestrian area (on double yellow lines, for 3 hours maximum), not just drop off.
63. An alternative option would be to allocate the space to pavement cafes (where businesses have applied and meet all the other criteria) and remove the ability for Blue Badge holders to park on double yellow lines in those areas. This would need to be considered very carefully in road safety terms as vehicles carrying Blue Badge holders would still be allowed to access these areas, including turning around at the Church Street/Silver Street junction, but would have to navigate around pavement café areas on the carriageway.
64. It would also reduce the availability of on street parking for vehicles carrying Blue Badge holders and increase the distance Blue Badge holders would have to travel without a vehicle to access city centre shops and services.

Organisational Impact and Implications

65. The following implications have been identified for the recommended options:
 - **Financial:** Before Covid, the council had a budget of £24k for income from café licences. At that point we were charging £660 per licence. During Covid the charge for a café licence was capped at £100/year, and income was below the budget, although compensated in part by a government grant. The new charges will be £350 for renewals and £500 for new licences. Total income from the fees will be dependent on the total number licences issued but based on the current number of licences, the income should be similar to pre-Covid levels. We will monitor the impact on this throughout the year.

There is a Network Management budget of £878k for 2024/25. This will cover expenditure relating to the changes in regularising the uses in the privately maintained highways. This report expects an increase in expenditure depending on what action is required. Also additional income is expected from the licences.

Not considered that will go above the budget to provide this service.

No enforcement related financial implications identified as this report does not consider any increase in compliance monitoring and enforcement.

- **Human Resources (HR)** – no implications identified as this report does not consider any increase in compliance monitoring and enforcement.
- **Legal** - The relevant legislation is referred to in the report.

There is no statutory requirement to have a pavement licensing policy; however, it is good practice to do so. A policy guides applicants and assists with consistent and transparent decision making. However, each case must be considered on its own merits with the decision maker being prepared to make exceptions to the policy in appropriate circumstances. In formulating its policy, the Council should have regard to the provisions of the Human Rights Act 1998 and the Public Sector Equality Duty.

- **Procurement** – no implications identified.
- **Health and Wellbeing** – no implications identified apart from the link to the Council Plan's wider Health commitment.
- **Environment and Climate action** – no implications identified
- **Affordability** – no implications identified
- **Equalities and Human Rights**, See impacts identified in the EQUIA
- **Data Protection and Privacy** – no implications identified
- **Communications** – Where changes to the local guidance for pavement café licensing are recommended and then approved by the Licensing Committee, the relevant webpages will be updated and licence holders will be sent the relevant information as

required (communications with the businesses are generally via email).

- **Economy**, contact: Head of City Development.

As highlighted in the report, the Council has worked with partners, including the city centre business community over the past few years to develop the “Our City Centre Vision”, which strives to create a vibrant city centre for all. The Vision highlights the importance of outdoor seating in creating an attractive and active city centre, as well as encouraging investment in public spaces, squares and our shopping areas. However, the vision for the city also strives to improve accessibility in the city centre, which this report considers.

The recommendations in this report will have mixed impacts on the local economy. For those businesses which have come to rely on the use of pavements and the highway to boost income, where licences can no longer be granted, there will be negative impacts, as set out in the petition. However, more broadly, ensuring that the city centre is accessible to all produces a positive impact to the city centre as a whole.

The council will continue to work with city partners to deliver the Our City Centre Vision, creating a vibrant city centre that supports business which is welcoming and accessible to all.

Risks and Mitigations

66. There are no significant risks identified for the update of the licensing guidance and process as it addresses a change in legislation and other small changes to an established process.
67. Risks identified for the options considered to regularise cafes and other uses in privately maintained highway areas include:
 - a) Stopping up applications rejected or not progressed due to significant objections/highway being necessary
 - b) Objections to S115 licences by frontagers with an interest could result in businesses not being able to legally use the areas they have used historically to support their income;
 - c) Some businesses may not be granted licences under S115E or the Levelling Up and Regeneration Act 2023, if they can't

meet the criteria set out here: www.york.gov.uk/highway-licences/pavement-caf%C3%A9-licence-guidance-process/2. This could result in businesses not being able to legally use the areas they have used historically to support their income

Wards Impacted

68. All wards, although Guildhall ward will be impacted the most for the review of the licensing process and guidance as the majority of pavement café licences are issued for city centre businesses. Wards outside the city centre, where there are secondary centres or small areas of shops will be impacted the most by the options presented to regularise licensing for businesses using privately maintained highway areas.

Contact details

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Background papers

No additional background papers. All relevant papers are listed in the report.

Annexes

- Annex A: Petition “Support outdoor dining in York” (personal details have been redacted)
- Annex B: Equalities Impact Assessment (EIA)