

Executive

22 November 2022

Report of the Director of Transport, Environment and Planning
Portfolio of the Executive Member for Transport, Portfolio of the Executive Member for Housing and Safer Neighbourhoods, Portfolio of the Executive Member for Economy and Strategic Planning

Pavement café licence update

Summary

1. This report presents proposed changes to City of York Council's pavement café licensing guidance and process, following the completion of a review of the current licensing guidance, as approved by Executive on 28 July 2022 (available here: <https://democracy.york.gov.uk/ieDecisionDetails.aspx?ID=6601>).
2. The revised 'City of York Guidance and Conditions for Pavement Cafes' will be used to review licence applications submitted in November/December 2022 by businesses wanting to renew their licences for January 2023 (under the Business and Planning Act 2020).
3. The current pavement café licence guidance in the City was implemented under emergency government legislation in response to COVID, in support of immediate economic support and the "Eat out to help out" scheme. This emergency legislation deregulated the existing process for pavement cafes and removed the requirement for planning permission, which ordinarily was used to address access issues and provide suitable mitigations.
4. The "Levelling Up and Regeneration Bill" proposes permanent changes to pavement café licences removing the requirement for planning permission for pavement cafes in the long term.
5. As our City has returned to more normal post-COVID operation, the impact that emergency pavement cafes has had on specific access issues has become more apparent.

6. 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 and conditions when cafes are acceptable, recognising and limiting the impact they have on access has been carried out by an access consultant with the input of disabled residents.
7. The report sets out the recommended updates to the local guidance and builds on the experience and feedback received on residents' lived experiences of pavement cafes since the changes introduced by the Business and Planning Act in 2020. It has been informed by work undertaken by independent access consultants to review the current pavement café licensing guidance (available in Annex A). It also considers the Council's city centre strategy "My City Centre Vision", which was adopted by the Executive on 18 November 2021 (<https://democracy.york.gov.uk/ieDecisionDetails.aspx?AllId=60466>) for which one of the key objectives is to "support outdoor eating and café culture in the city centre".
8. The report provides an analysis of the options presented to the Executive, supported by an Equality Impact Assessment provided in Annex C. Options are presented under three themes:
 - a) Pavement café location, considering whether pavement cafes should be allowed on footways and in on street parking bays;
 - b) Updates to the guidance document and provision of additional information, and
 - c) Requirement for licence holders to undertake counter-terrorism training.
9. Recognising the impact that current temporary arrangements have had on residents and visitors, particularly on people with health conditions or impairments, it is recommended that café licences issued under the fast-track approach are only allowed on footways if 1.5m width remains for people to get past (with the exception of pedestrianised streets with level access between the footway and the carriageway). This would support the recommendations set out by the access consultants and address the majority of access issues caused by café furniture obstructing the footpath. Further recommendations seek to also address improved guidance, information, training and enforcement.

Recommendations

10. The Executive is asked to:

- a) Note the Access Consultants work on Pavement Café Licences contained with annex A.

Reason: this is the context for the proposed changes to the way pavement cafes will be licensed

- b) Recommend to full council the following changes to local guidance used in the determining of pavement café licenses under the Business and Planning Act 2020
- i. Cafés only allowed on footways if 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. If a licence is refused under the Business and Planning Act it would be possible for the applicant to use the planning permission process (and licensing under Highways Act Part 7A) to seek permission for a pavement café area. If a permission and a licence were to be granted under this process, adequate access mitigations would be conditioned through the planning permission on a case-by-case basis and all costs associated with required highway improvements would need to be borne by the applicant;
 - ii. Café areas can be allowed in on street parking bays, where sufficient parking and loading capacity remains (including for Blue Badge holders) and the café area can be protected from passing traffic (if required). The licence holder will be required to cover all associated costs (changes to the permanent TRO, changes to the kerb line/protection measures).
 - iii. To 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.
 - iv. Adopt the updated guidance document (Annex B) and proposals for additional information to be provided. Key changes are updated barriers requirements and specifications, updated access width requirements, strengthened enforcement process, reintroduction of a £100 charge per licence. Additional information to be provided includes design and set up guidance for licence holders, advice and support on 'How to set-up your pavement cafe area', and information on hospitality venues' duties under the Equality Act. Pavement café licence holders will be written to – to notify them of the changes.

Reason: To clarify the criteria against which pavement café applications will be assessed and mitigate the impact of some pavement cafes on accessibility and to clarify the criteria against which pavement café applications will be assessed and the standards licence holders will be expected to meet and provide additional support and guidance to licence holders.

- c) Recommend to full council that the Policy for Pavement Cafes under the Business and Planning Act 2020 is reviewed by them and is added to the list of functions of licensing committee. Officers will continue to determine applications made under that policy

Reason: Licensing Committee can review the Policy

- d) Approve the provision of information on pavement cafés on the Council's website, for users who want to plan in advance

Reason: this is the context for the proposed changes to the way pavement cafes will be licensed.

- e) To set up a regular panel for York groups and communities to provide feedback on their lived experience of pavement cafes in York

Reason: To enable groups and communities to provide feedback in a suitable format and timescales (as the consultation process under the Business and Planning Act is very short) and to enable lived experience to inform licence reviews or enforcement action where required

Background

11. Pre-2020, planning permission was required for venues which wanted to use part of the highway as a pavement café area. This enabled a full consultation process to take place and all relevant issues to be considered by the planning authority (for example, a dropped kerb could be required as a condition of the planning permission being granted to enable disabled access). Once planning permission was obtained, the Highway Authority used to charge £660/year for café furniture to be licensed in the highway. Before the Business and Planning Act, there were approx. 45 pavement cafes which had received planning permission (change of use) and were licensed under Part 7A of the Highways Act 1980.

12. In 2020, the Business and Planning Act introduced a deregulated approach with temporary fast-track licensing regime for pavement cafés set out on relevant highways (as defined in the Act), as part of the Government’s Covid recovery response to enable businesses to operate within public health guidance of limited indoor space use. Licences issued under this fast-track process did not undertake previously mandated consultation which could address access issues and were initially only due to be valid for no longer than one year, but this has now been extended twice. This fast-track approach does not allow for any real consultation, with the requirement that notices of intention are displayed at the property for 7 days and the council then has 7 days to determine the application or it is deemed approved.
13. The latest extension by the Government retained this temporary licensing regime until the end of September 2023. In July 2022, there were 114 pavement cafes licensed under the Business and Planning Act. As licence holders had to apply for licences again for September-December 2022, the number of licences applications went down slightly to 98 in November 2022.
14. The Levelling-up and Regeneration Bill proposes to make this deregulated licensing regime permanent, with a few changes (more information available here: <https://bills.parliament.uk/bills/3155>). As the Bill proposes a wide range of changes to address planning, regeneration, and environmental matters, it is likely that the temporary provisions will continue to be extended whilst the Bill is discussed and amended through the parliamentary process.
15. The Business and Planning Act and the Government’s guidance on pavement cafes therefore continue to apply (available here: www.gov.uk/government/publications/pavement-licences-draft-guidance/draft-guidance-pavement-licences-outdoor-seating-proposal). When the fast-track regime first started, during the Covid pandemic, the Council developed its own local guidance, as advised by Government. The document, titled “CYC pavement café licensing process”, was last updated in September 2021 (available here: <https://www.york.gov.uk/highway-licences/pavement-caf%C3%A9-licences>). This paper proposes further updates and changes as a result of the review undertaken with the support of independent access consultants in October/November 2022.
16. The Business and Planning Act 2020 includes a “no-obstruction condition” (Section 3(6)) and requires local authorities to “have regard to any guidance issued by the Secretary of State” related to the Act.

17. The Government “Guidance: pavement licences (outdoor seating)”, updated in July 2022 describes how local authorities should consider the national no-obstruction condition. The guidance states:
- a) *“When determining whether furniture constitutes an unacceptable obstruction in light of the no-obstruction condition, the provisions require that local authorities consider the needs of disabled people.” The guidance also refers to Inclusive Mobility, stating that “in most circumstances 1500mm clear space should be regarded as the minimum acceptable distance between the obstacle and the edge of the footway”.*
 - b) *“Authorities are encouraged to publish local conditions subject to which they propose to grant pavement licences so that applicants and those making representations are aware of them. (...) When setting local conditions and determining applications, issues authorities will also want to consider include: (...)*
 - i. *accessibility – taking a proportionate approach to considering the nature of the site in relation to which the application for a licence is made, its surroundings and its users, taking account of:*
 - 1. *considerations under the no-obstruction condition, in particular considering the needs of disabled people;*
 - a. *any other temporary measures in place that may be relevant to the proposal, for example, the reallocation of road space. This could include pedestrianised streets and any subsequent reallocation of this space to vehicles;*
 - b. *whether there are other permanent street furniture or fixed structures in place on the footway that already reduce access; and*
 - c. *other users of the space, for example if there are high levels of pedestrian or cycle movements.”*
18. Based on this information, the local guidance previously adopted by City of York Council enabled pavement café areas to be licensed to occupy the whole of the pavement in some streets where vehicular traffic is restricted (footstreets and restricted access streets such as Fossgate) as carriageway space has been reallocated to pedestrians (and cyclists one-way on Fossgate) during restricted access hours.

19. The deregulation of the license approval whilst beneficial to business support through the pandemic, also has made clear the impact that emergency pavement cafes has had on specific access issues, which were unable to be addressed on a case by case basis as under the pre-covid planning route.
20. Officers and the Access Consultants (see Annex A) identified the following key issues with pavement cafés licensed in York, under the Business and Planning Act, are:
 - a) The need to review existing licences and licensing guidance to ensure that they are suitable for long term arrangements. The current CYC guidance was developed to support a temporary fast-track process established in response to Covid. As this process is likely to remain in place in the long term, the guidance needs to be reviewed to ensure that it adequately considers the needs of all highway users (including those with protected characteristics). This need is identified in the Executive’s decision on City Centre Access – Action Plan Update of 28 July 2022 (available here: <https://democracy.york.gov.uk/ieDecisionDetails.aspx?ID=6601>);
 - b) Significant challenges to the delivery of additional dropped crossings/kerbs to enable people using a wheelchair, mobility aid, or pushchair to gain access to premises and cross the streets (mainly due to engineering challenges linked to the presence of cellars or shallow utilities in the adopted highway). This led to the authority developing a trial scheme to provide businesses with temporary ramps and traffic cones to be placed in the highway to enable wheelchair and mobility aid users to get around pavement café licences where they occupy the full width of the footway (see officer decision available here: <https://democracy.york.gov.uk/ieDecisionDetails.aspx?ID=6637>);
 - c) Lack of clarity on access requirements to licensed premises themselves. Many pavement cafés are set out in ways that would not enable wheelchair or mobility aid users to access the licensed area (and/or the premises). Under the Equality Act, it is for businesses to consider any reasonable adjustment they should be making to meet their duties;
 - d) Further consideration required for the impact of the proposed “Protect Duty” on pavement cafes;
 - e) Furniture set out or stored on the highway outside of the licensed times. This is a significant issue in the footstreets as the licensed

times are generally linked to the start and end of the pedestrianised period. When licence holders set out their tables and chairs too early or leave them out too late, pedestrians have to step into the carriageway, in conflict with delivery vehicles and other permitted traffic;

- f) Area where furniture is set out differs from what is set out in the licence. This is a significant issue as where furniture occupies a larger area or is placed in a different location than that agreed, it can impede access for highway users, including authorised and emergency vehicles;
- g) Furniture in use differs from that specified in the licence. The majority of issues under this category relates to the barriers which are required to demarcate the pavement café area. The terms of the licences require these barriers to be stable and sturdy canvas separator on metal uprights with a tapping rail set out around the pavement café area to help with accessibility for visually impaired users. Where these are not installed correctly, key issues are tapping rails missing or not installed correctly, insufficient number of barriers to cover the perimeter of the café area, unsuitable barriers used (for example A Boards used as barriers).
- h) Difficulties with taking enforcement action due to a range of factors including the requirement to constantly check on cafes, lack of clarity on some requirements set out in the guidance (for example how barriers should be set out), and limited enforcement powers provided by the legislation (the only possible action is to serve notice and revoke the licence). The Council adopted a revised enforcement process in September 2021 (officer decision available [here](https://democracy.york.gov.uk/ieDecisionDetails.aspx?ID=6284): <https://democracy.york.gov.uk/ieDecisionDetails.aspx?ID=6284>). This stated that up to 3 letters (notices) would be sent to licence holder. Where 3 letters have been sent for the same issue(s) and the licence is still not being complied with, the licence would be revoked. This would apply to the breaches which are considered the most significant due to their impact on highway safety and/or disabled groups, as listed below:
 - i. Furniture set out or stored on the adopted highway outside the premises outside of the licensed times of use;
 - ii. Area where furniture is set out differs/is larger than agreed in the licence; and

iii. Required barriers (with tapping rail) not provided.

21. Enforcement options are limited under the Business and Planning Act. If a condition imposed on a licence is breached, the local authority can: issue a notice requiring the breach to be remedied or revoke the licence, with the licence holder having to go through the application process again to regain their licence.
22. If a licence is revoked but the venue was to continue placing furniture in the highway without a licence, the furniture becomes a highway obstruction as defined under the Highways Act 1980.
23. Actions available to the local authority under the Highways Act include Section 137 – Wilful obstruction offence, Section 148 - Penalty for depositing things or pitching booths etc. on highway, and Section 149 - Removal of things so deposited on highways as to be a nuisance, etc.
24. None of these options are expedient. For example, if the Council were to serve notice for the furniture to be removed under Section 149 of the Highways Act and the venue did not comply, the authority would then need to make a complaint to a magistrates' court for a removal and disposal order, unless the furniture could be assessed as constituting "*a danger to users of the highway*", in which case the authority could take immediate action to remove it.
25. Whilst it is likely pavement cafes under the deregulated approach are here to stay in some form in the future, this is no longer as part of an emergency response to public health rules. Therefore, a review undertaken in consultation with disabled people with lived experience was requested by the Executive in July 2022 of the temporary guidance and conditions when cafes are acceptable, recognising and limiting the impact they have on access. This paper provides the recommendations following this review.
26. Following the Executive decision on 28 July 2022, short term licences have been issued to businesses under the current licensing guidance as all licences expired at the end of September 2022.
27. These licences are valid until the end of December 2022 and businesses will need apply for renewal in December 2022 if they want to continue running a pavement café between January and September 2023. The revised guidance will be used to assess these applications and the revised conditions will apply to licensed pavement cafes.

Consultation

28. Following the Executive decision on 28 July 2022, the decision was taken to focus the consultation on access issues linked to pavement cafes. To enable a meaningful consultation to take place in a short period of time (avoiding the summer holiday period), independent access consultants were appointed in September 2022 to identify access issues linked to pavement cafes, focusing on the city centre, propose and review potential mitigation measures, and proposes changes to the current licensing guidance. The terms of reference for the access consultants can be found in Annex D.
29. The consultants undertook a site visit and reviewed information provided by officers on existing licences, current guidance and issues identified. The consultants also organised two panel workshops (online meetings held in October/November 2022) with representatives from the disabled community. The first workshop focused on identifying the issues and the second workshop discussed possible mitigations. The report with issues identified and suggested recommendations can be found in Annex A.
30. A letter summarising the options proposed in this report was sent to all pavement café licence holders and business groups on 9 and 10 November 2022. The letter explained the process to make changes to the guidance and invited businesses to provide feedback on the options. Officers will verbally update on any feedback received at the meeting.

Options

31. This section presents options to make changes to the City of York licensing guidance and process for pavement cafes, based on the work undertaken by the independent access consultants (see Annex A) and the experience and feedback received since the fast-track licensing regime started.
32. Parklets and decked areas are not considered in this report as they are not licensed under the Business and Planning Act (and are not included in the Bill). As well as highway licensing, planning permission would be required for such structures if they were to be in use for more than 28 days.
33. Options are listed under three themes: pavement café location, updating the guidance document and providing additional information, and requirement for licence holders to undertake counter-terrorism training.

a) **Theme 1 - Pavement café location** (guidance document to be updated once decision made)

- i. Pavement cafes in the carriageway – No decision required - Cafés are currently allowed in the carriageway in the footstreets area during pedestrianised hours, where a minimum 3m width remains available for authorised and emergency vehicle access.
- ii. Pavement cafes on footways – Decision required between the following options:

1. **Option 1a – Recommended option** - Cafés only allowed on footways if 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. If a licence is refused under the Business and Planning Act it would be possible for the applicant to use the planning permission process (and licensing under Highways Act Part 7A) to seek permission for a pavement café area. If a permission and a licence were to be granted under this process, adequate access mitigations would be conditioned through the planning permission on a case-by-case basis and all costs associated with required highway improvements would need to be borne by the applicant; or

2. **Option 1b** - In footstreets during pedestrianised hours, cafés allowed to take the whole of the footway:

- a. In surface level streets (without kerbs);
- b. In streets with kerbs, where there are existing dropped kerbs or raised crossings within 50m of the café area and there is adequate space on the footway to turn a wheelchair around;
- c. In streets with kerbs but insufficient dropped kerbs or raised crossings or insufficient space for a wheelchair to turn around on the footway, licence holders will be required to install temporary kerb ramps to provide access to and from the footway

around their café area. Where this cannot be provided (e.g. carriageway too narrow or kerb too high), the café area will not be permitted to take the whole of the footway;

d. In streets with traffic restrictions (for example Fossgate) or low traffic (for example New Street outside pedestrianised hours), if a minimum 1.5m footway width remains available on the other side of the street. Where this causes issues for access to premises, licence holders will be required to install temporary ramps. Where this cannot be provided, the café area will not be permitted to take the whole of the footway.

3. **Option 1c** - Café areas allowed as per Option 1b but with temporary ramps required on each side of the licensed area, unless a dropped kerb is available immediately adjacent (or the street provides level surface access). Where this cannot be provided (e.g. carriageway too narrow or kerb too high), the café area will not be permitted to take the whole of the footway.

iii. Pavement cafes using on street parking bays – Decision required between the following options:

1. **Option 1d** – No long-term use of parking bays for pavement café licences - Pavement cafes currently licensed using suspended on street parking bays (on Micklegate) will not be renewed after the end of December 2022; or

2. **Option 1e – Recommended option** - Café areas can be allowed in on street parking bays, where sufficient parking and loading capacity remains (including for Blue Badge holders) and the café area can be protected from passing traffic (if required). The licence holder will be required to cover all associated costs (changes to the permanent TRO, changes to the kerb line/protection measures).

b) **Theme 2 – Updating the guidance document and providing additional information – Options 2a to 2c are all recommended**

options. Decision required on the following options (options supported or rejected):

- i. **Option 2a** - Approve the amended guidance document provided in Annex B. Key changes are:
 1. Changes to barriers requirements and specifications;
 2. Increased available width for access to licensed area and premises from 1.2m to 1.5m to enable wheelchair access;
 3. Changes to the enforcement process to reduce notices before enforcement action is taken from 3 to 2 notices;
 4. Reintroduction of a £100 charge per licence;
 5. Guidance to be supported by additional information as follows:
 - a. Clear design and set up guidance for licence holders using drawings and pictures to show how areas need to be set up;
 - b. Advice and support on 'How to set-up your pavement cafe area', explaining why the various requirements are important and the order in which the area should be set up. This would include a visit to the licensed premises to provide advice on the pavement café area set up; and
 - c. Duties under the Equality Act for hospitality venues, for example inviting licence holders to consider access to their pavement café area and premises, type of seating selected for the café area, etc.
- ii. **Option 2b** – Provide information on pavement cafés on the website, for users who want to plan in advance (location, hours of operation, planned accessibility improvements, etc).
- iii. **Option 2c** - 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, possible additional access improvements (e.g. temporary ramps) 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 (see here for more information: <https://democracy.york.gov.uk/ieDecisionDetails.aspx?ID=6601>).

c) Theme 3 – Counter terrorism training – Decision required between the following options:

- i. **Option 3a** – Provision of additional information on the Protect Duty and its implications for hospitality venues, explaining the relevance of the duty to premises with pavement cafes and providing information on training and support available for licence holders and staff (adding to existing information in the guidance document); or
- ii. **Option 3b** – Recommended option - Protect duty changes as proposed under Option 3a but the completion of the ACT Awareness E-learning course by the named licence holder (<https://ct.highfieldelearning.com/>) becomes a condition of issue of a pavement café licence (completion certificate to be provided to licensing team on application).

Analysis

- 34. This section presents an appraisal of the advantages and disadvantages of each option.
- 35. Recognising the impact that current temporary arrangements have had on residents, particularly on people living with health conditions or impairments it is recommended that café licences under the fast-track approach are only allowed on footways if 1.5m width remains for people to get past (with the exception of level access pedestrianised streets). This would support the recommendations set out by the access consultants and address outstanding access issues caused by furniture obstructing the footways.

Options (overview)	Advantages	Disadvantages
Theme 1 - Pavement café location (<i>Executive is asked to choose between Options 1a, 1b and 1c</i>)		
Option 1a –	Fulfilment of the	Negative impact on the

Options (overview)	Advantages	Disadvantages
<p>Recommended option - Cafés only allowed on footways if 1.5m width remains for people to get past, with the exception of pedestrianised streets with level access</p>	<p>recommendation set out by the access consultants.</p> <p>Simple application and interpretation of the national no-obstruction condition set out in the Business and Planning Act (not taking account of the guidance which invites local authorities to consider the reallocation of road space).</p> <p>Consistent approach across the local authority area regardless of whether the streets are pedestrianised or not. The only exceptions would be for level access streets in the pedestrianised area.</p> <p>Impact of pavement cafes on access for disabled people (and young children and their carers using prams or pushchairs) mitigated to some extent as there is no need to travel on and off the footways to avoid pavement cafes (apart from in level access streets where this is easier to do). It is important to note that this is not a full mitigation as café areas would continue to create a pinch point and disabled people may be delayed as they wait to be able to get past and other issues remain, causing difficulties</p>	<p>Council’s city centre strategy “My City Centre Vision”, adopted by the Executive on 18 November 2021, with a key objective to “<i>Support outdoor eating and café culture in the city centre</i>”.</p> <p>Initial analysis of the pavement café licences in issue in July 2022 shows that if this rule was implemented, at least 50% of licence holders would be affected. This number is likely to be higher in practice as the initial analysis did not take account of footway conditions or gradients.</p> <p>Out of a total of 114 pavement café licences, the initial assessment identified 27 licence holders who would not be allowed a pavement café area at all; and 30 who may be allowed to retain a reduced pavement café area.</p> <p>These premises would be allowed to seek a license through the pre-covid full planning route, which would address and implement the necessary highway adjustments and access improvements but</p>

Options (overview)	Advantages	Disadvantages
	<p>for people who live with conditions which affect their sight, learning, understanding, or concentrating abilities, or their memory.</p> <p>Further mitigations are recommended to be addressed as part of Options 2a, b and c..</p>	<p>would need to be fully funded by the applicant. There is no guarantee that they would be approved.</p>
<p>Option 1b - In footstreets during pedestrianised hours, cafés allowed to take the whole of the footway under specific conditions including suitable crossing point within 50m</p>	<p>This option allows for pavement cafes to take the whole footway width in pedestrianised areas and restricted traffic streets under specific conditions, including</p> <ul style="list-style-type: none"> • the availability of a suitable dropped kerb or raised crossing within 50m (including the requirement for a temporary ramp if no permanent measures are available); and • the availability of a 1.5m corridor on footway on one side of the street in traffic restricted/low traffic streets <p>This is in line with the Council’s interpretation of the Business and Planning Act and associated government guidance which</p>	<p>Fails to follow the recommendation set out by the access consultants.</p> <p>Negative impact on disabled people (and young children and their carers using prams or pushchairs) in the footstreets and restricted traffic streets as they may need to go back on themselves for up to 50m to find a suitable crossing point to access the footway or the carriageway.</p> <p>The temporary kerb ramps will be specified to meet Inclusive Mobility requirements, but some wheelchair or mobility aid users may find them difficult to use and they will increase the risk of trips and falls, especially for people living with vision impairments, as</p>

Options (overview)	Advantages	Disadvantages
	<p>states <i>“When setting local conditions and determining applications, issues authorities will also want to consider include (...) considerations under the no-obstruction condition, in particular considering the needs of disabled people; any other temporary measures in place that may be relevant to the proposal, for example, the reallocation of road space. This could include pedestrianised streets and any subsequent reallocation of this space to vehicles (...)”</i>.</p> <p>This option would enable most of the pavement café areas currently licensed to remain in place, whilst ensuring that crossing facilities are available within 50m (based on Inclusive Mobility guidance).</p> <p>This option would support the Council’s city centre strategy “My City Centre Vision”, adopted by the Executive on 18 November 2021, with a key objective to <i>“Support outdoor eating and café culture in the city centre”</i>.</p>	<p>recognised in the access consultant report.</p> <p>The correct installation and regular inspection of the temporary kerb ramps will be the responsibility of the licence holders. If this is not done correctly, the risk of trips and falls will increase, and wheelchair or mobility aid users may not be able to use the ramps.</p> <p>The availability of a 1.5m corridor on one footway in traffic restricted/low traffic streets (for example in Fossgate) relies on users having to cross the street to continue using this facility, adding to the distance of their journey.</p> <p>Some pavement café areas may be reduced in size as they will need to make space for the ramps and the landing areas within their licensed area (unless they can obtain the consent of neighbouring frontagers to place the ramps in front of their properties). A few pavement café areas may not obtain a licence if it is not possible to install the temporary ramps, for example due to the</p>

Options (overview)	Advantages	Disadvantages
		<p>carriageway being too narrow or the kerbs being too high or uneven.</p> <p>Additional cost for businesses as they will need to meet the cost of the ramps and cones required (approx. £70/ramp) and use staff resources to install and check the ramps and cones during the day.</p>
<p>Option 1c - Café areas allowed as per Option 1b but with temporary ramps required on each side of every licensed area (where needed)</p>	<p>As for Option 1b but removing the need for wheelchair and mobility aid users to go back on themselves to find a suitable crossing point as ramps would be provided on each side of the café areas unless they are in a street which offers level access or a suitable dropped kerb or raised crossing is available immediately adjacent to the pavement café area.</p> <p>This option will enable most (but not all – as some locations will not be suitable for the temporary ramps to be installed) of the pavement café areas currently licensed to remain in place, whilst ensuring that crossing facilities are available.</p>	<p>As for Option 1b but with an increased risk of trips and falls, especially for people living with vision impairments, as many more ramps would be required. For this reason, officers would not support this option.</p> <p>As for Option 1b, the correct installation and regular inspection of the temporary kerb ramps will be the responsibility of the licence holders, but this will apply to many more ramps. If this is not done correctly, the risk of trips and falls will increase, and wheelchair or mobility aid users may not be able to use the ramps.</p> <p>Additional cost for businesses (for more businesses than in Option</p>

Options (overview)	Advantages	Disadvantages
		1b) as they will need to meet the cost of the ramps and cones required (approx. £70/ramp) and use staff resources to install and check the ramps and cones during the day.
<p>Option 1d - No long-term use of parking bays for pavement café licences</p>	<p>On street parking bays are returned to their intended use and available for drivers to park (including Blue Badge holders who can park in on-street pay and display bays, free of charge, with no time limit during normal pay and display hours).</p> <p>Pay and display income for the Council.</p> <p>Unightly temporary protection measures (water filled barriers) provided by the Council as an emergency Covid response can be removed (for example on Micklegate).</p>	<p>Negative impact on hospitality venues (mainly on Micklegate currently) and negative impact on the Council’s city centre strategy “My City Centre Vision”, adopted by the Executive on 18 November 2021, with a key objective to <i>“Support outdoor eating and café culture in the city centre”</i>.</p> <p>Some venues currently licensed to use on street parking bays may not be able to retain a pavement café licence (if no suitable alternative location identified).</p>
<p>Option 1e - Recommended option - Café areas can be allowed in on street parking bays under specific conditions</p>	<p>This option would better support the Council’s city centre strategy “My City Centre Vision”, adopted by the Executive on 18 November 2021, with a key objective to <i>“Support outdoor eating and café culture in the city centre”</i>.</p>	<p>Additional cost for businesses which could be significant if they wish to continue using the on-street parking bays (changes to the permanent TRO, changes to the kerb line and footway/protection measures).</p> <p>The need for parking</p>

Options (overview)	Advantages	Disadvantages
		<p>would be reviewed (specifically considering access for Blue Badge holders) and the licence may not be granted if there is significant need/demand.</p> <p>Permanent loss of pay and display income for the Council if the licence is granted and the bay is removed.</p>
<p>Theme 2 – Updating the guidance document and providing additional information (<i>Options 2a to 2c are all recommended options. Executive is asked to support or reject each option</i>)</p>		
<p>Option 2a - Recommended option - Approve the amended guidance document provided in Annex B. Key changes are: changes to barriers, £100 charge per licence and additional information and guidance for licence holders.</p>	<p>Barriers: Improved pavement café set up should benefit all users and more specifically people with vision impairments. Clearer guidance will better support enforcement action where required.</p> <p>Access width: improved accessibility provision as 1.5x1.5m should then be available on the footway for wheelchair users to access the café area/premises (in line with Inclusive Mobility)</p> <p>Enforcement process: reduction from 3 to 2 notices will make the enforcement process quicker whilst giving the licence holder the opportunity to rectify</p>	<p>Barriers: Additional cost for businesses as many will need to purchase additional and/or compliant barriers. Possible reduction in available space for tables and chairs within the licensed area to enable compliant barrier set-up.</p> <p>Access width: small reduction in available café area may lead to reduction in the number of tables and chairs in use.</p> <p>Enforcement process: reduced number of notices reduces the time for business to react. Financial impact if licence is revoked.</p>

Options (overview)	Advantages	Disadvantages
	<p>mistakes.</p> <p>Charge: Additional income for the Council to partially cover the costs associated with pavement café licensing. This charge is still significantly lower as that of the pre-covid arrangements,</p> <p>Additional information: Aiming to raise awareness amongst licence holders, venue managers and staff of the importance of compliance with licence terms and conditions and explain the impacts of non-compliance on users. Raise awareness of venues' own duties under the Equality Act. Aiming to improve compliance by providing information and support on how to set up the pavement café area (as a first step before enforcement action).</p>	<p>Charge: Additional cost for businesses, although significantly lower than planning and Highways Act licensing charges (pre-Covid process).</p> <p>Additional information: Additional resources required for Council visit to licensed premises to support area set up but should result in improved compliance. Additional costs for business likely (for example if they consider how they can better meet their duties under the Equality Act).</p>
<p>Option 2b - Recommended option – Provide information on pavement cafés on the website</p>	<p>A trial to provide the information on pavement café location and timings in a map format is available here: www.york.gov.uk/roadworks (see table and chairs symbol on the map). This will be published on the pavement café pages once the data input has been completed.</p> <p>The proposal aims to</p>	<p>Additional cost and resources required for the Council to provide this information in suitable formats (and keep it up to date).</p> <p>Limited use of the information provided as licence holders decide on a day-to-day basis whether to use their pavement café area.</p>

Options (overview)	Advantages	Disadvantages
	<p>improve and develop this further by working with disabled groups (through the Access Officer) to identify the best formats and platforms for this information to be made available, as well as the type of information required.</p> <p>This will help people who need or want to plan in advance to visualise where there may be pavement cafes on specific streets.</p>	
<p>Option 2c - Recommended option - Set up a regular panel to provide feedback on their lived experience of pavement cafes</p>	<p>The proposal aims to address the issue of the very short timescales for consultation under the Business and Planning Act (7 days) by providing an alternative way for disabled people and groups to provide feedback on pavement cafes. This would inform further reviews of pavement café guidance/policy and enforcement action (where required).</p> <p>The proposal aims to integrate the mechanism for feedback on cafes (through a panel) with the work of the CYC Access Officer.</p>	<p>Request for disabled people and groups to engage can sometimes be excessive, requiring a lot of time and energy from specific individuals/groups. The proposal aims to reduce this pressure by using a panel which would be managed by the CYC Access Officer and would be convened regularly to discuss wider issues, with pavement cafes being one topic on the agenda (unless more time is required to discuss them).</p>
<p>Theme 3 – Counter terrorism training (<i>Executive is asked to choose between Options 3a and 3b</i>)</p>		

Options (overview)	Advantages	Disadvantages
Option 3a - Provision of additional information on the Protect Duty and its implications for hospitality venues	The proposal aims to raise awareness of the terrorism threat and invites licence holder, venue managers and staff to consider their role to address this threat.	No requirement for anyone to complete the training so it is unlikely that the training would be completed.
Option 3b – Recommended option – As Option 3a + Completion of the ACT Awareness E-learning course by the named licence holder becomes a condition of issue of a pavement café licence	The proposal aims to raise awareness of the terrorism threat. It requires named licence holders to have completed the Awareness training and invites venue managers and staff to consider their role to address this threat.	Additional cost for businesses (staff time – training session requires no more than one hour to complete).

Council Plan

36. This proposal relates to the following Council’s outcomes, as set out in the Council Plan 2019-2023 (Making History, Building Communities):

- a) Good health and wellbeing;
- b) Well paid jobs and an inclusive economy; and
- c) An open and effective council.

37. The Council’s “My City Centre Strategic Vision” was adopted on 18 November 2021. 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*”.

Implications

38. The implications of the proposals have been identified as follows.

Financial – The implementation of Option 1e may potentially result in a loss of parking income. This impact would need to be considered and addressed if and when applications are received. Option 2a proposes to reinstate the £100 per annum licence charge to be applicable to licence applications from November/December 2022 for licences starting from January 2023. It is estimated this will generate £5k per annum. This is below budgeted income levels but will reduce the income shortfall position. The legislation does not allow for a higher licence charge. The remaining income shortfall of approx. £19k will continue to be managed within existing transport budgets. There is also a potential cost of £5k for specialist support to implement option 2a/b. This one-off cost will be met from existing transport budgets.

- **Human Resources (HR)** – Limited HR implications due to additional tasks requiring resourcing/prioritisation of tasks undertaken by existing staff. No additional recruitment required.
- **One Planet Council / Equalities** – An Equality Impact Assessment is provided in Annex C. The assessment has identified some limited positive impacts and mainly negative impacts for pavement cafes on people with the following protected characteristics: Age (older people and young children), Disability, Pregnancy and maternity, and Carers. It has also identified negative impacts on the following human rights: Article 8: Respect for your private and family life & Article 14: Protection from discrimination.
By reviewing the existing pavement café licensing guidance and adopting the recommended options in this proposal, the Council aims to mitigate the negative impacts of pavement cafes.

Equalities - The Council has a legal obligation under section 149 of the Equality Act 2010 to have due regard to eliminate unlawful discrimination and to promote equality of opportunity and good relations between persons of different groups. There are statutory conditions involved with pavement licences which take account of the needs of persons with mobility and visual impairments.

The Council has had due regard to its legal duties under equalities legislation when setting the pavement café licensing guidance.

In assessing the merits of each particular pavement licence application, the Council will have regard to its duties under equalities legislation.

Any businesses which apply for a pavement licence will also need to have regard to their own duties under the Equality Act 2010, such as their duty under section 29 of the Act not to discriminate in providing their service.

Human Rights – When considering matters relating to the grant, revocation, renewal or refusal of licences and the placing of conditions on licences, the Council must consider whether the decision affects an individual, group or company’s human rights as set out in the European Convention on Human Rights and if it does, whether the interference with those rights is permissible by reason of the justifications set out in the Convention. In addition, consideration must be given to whether the interference is proportionate.

Consideration needs to be given to the right to respect for private and family life and home, contained within Article 8, although this is a qualified right, and interference is permitted where this is in accordance with the law, or is necessary in a democratic society in the interests of public safety or the prevention of crime and disorder, or for the protection of the rights and freedoms of others.

Article 1 of the First Protocol provides that every person is entitled to the peaceful enjoyment of their possessions, although again this right is qualified in the public interest.

- **Legal** - The equalities and human right implications set out above highlight areas for potential legal challenge. The recommended options in this report are likely to satisfy the Council’s general obligations under the Equality Act 2010 and the specific duty set out in Section 3(7) of the Business and Planning Act 2020 to have regard to the needs of disabled people in the determination of applications for pavement licences.

The pavement café licensing regime introduced by the Business and Planning Act 2020 leaves discretion to Local Authorities to impose local conditions and guidance accompanying the Act encourages Local Authorities to publish such conditions. The adoption of local guidance assists in the transparency of the application process and in

so doing strengthens procedural propriety. The guidance could be challenged only if manifestly unreasonable or unlawfully adopted or implemented.

The Local Authorities (Functions and Responsibilities) (England) Regulations 2000 as amended by the Business and Planning Act provide that functions in relation to pavement licensing are non executive functions and therefore adoption by Council and maintenance by the Licensing Committee (if so delegated) in accordance with the Council's Constitution is lawful.

Pending adoption of updated guidance, new applications could properly be refused on the basis of emerging policy. The proposal to communicate directly with existing licence holders and to publicise the new guidance via the Council's website is a sensible approach to reduce disruption to businesses. The Council does not have the option to defer submitted applications beyond the determination period. Any applications not determined within the statutory window would be deemed approved.

- **Crime and Disorder** – Crime and disorder implications are linked to alcohol licensing which was also temporary changed by the Business and Planning Act. The Police and Council licensing teams are consulted on pavement café licence applications to ensure that these issues are taken into account before a decision is made on a pavement cafe licence application.
- **Information Technology (IT)** – Very limited IT implications, mainly to support Option 2b to provide information on pavement cafes on the website.
- **Property** – No property implications identified.
- **Other** – Highway implications are presented in the report.

Risk Management

39. Key risks identified for the proposals included in this report are as follows:

- a) Insufficient resources to deliver the approved options;

- b) Insufficient resources to monitor pavement cafes and take enforcement action where required;
- c) Failure of licence holders to correctly install and check on the temporary ramps;
- d) Failure of licence holders to comply with the terms and conditions of their licence (e.g. barriers, licensed times, etc).

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Report Approved

✓

Date 14/11/22

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Wards Affected:

All

✓

For further information please contact the author of the report

Background Papers:

No background papers

Annexes

- Annex A - City of York Council, Pavement Cafes and Licensing Guidance, Mima Accessibility Assessment and Recommendations Report

- Annex B - Business and Planning Act 2020 - Pavement café licence process – Updated CYC pavement café licensing process (proposed changes are tracked in the document)
- Annex C – Equality Impact Assessment
- Annex D – Access consultants terms of reference

List of Abbreviations Used in this Report

Abbreviations or technical terms used in the report are defined below.

- Highway – under the Business and Planning Act, a highway is defined as “relevant highway” means a highway
- (a)to which Part 7A of the Highways Act 1980 applies, and
- (b)which is not over Crown land or maintained by Network Rail.

Part 7A of the Highways Act 1980 applies:

- o (a)to a highway in relation to which a pedestrian planning order is in force;
 - o (aa)to a restricted byway;]
 - o (b)to a bridleway;
 - o (c)to a footpath (including a walkway as defined in section 35(2) above);
 - o (d)to a footway;
 - o (e)to a subway constructed under section 69 above;
 - o (f)to a footbridge constructed under section 70 above;
 - o (g)to 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
 - o (h)to a local Act walkway
- 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, expect for access.
 - Carriageway - the part of a road intended for vehicles rather than pedestrians
 - CYC – City of York Council
 - 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