

Economy and Place Scrutiny Committee Report

8 March 2023

Pavement cafes

Summary

1. The process to grant pavement café licences was changed by the government as a response to the Covid pandemic. This temporary deregulated regime has since been extended and is proposed to be made permanent through the Levelling up and Regeneration Bill.
2. The Council reviewed its local guidance in December 2022, changing the criteria against which licence applications are assessed to ensure that a minimum width of 1.5m generally remains available to highway users on footways and that suitable barriers are in place.

Recommendations

3. The Economy and Place Scrutiny Committee is asked to:
 - Note the report on the current policy, number of licences issued, enforcement approach and future changes once the Levelling up and Regeneration Bill is enacted.

Reasons:

- Paper requested by Economy and Place Scrutiny Committee.

Background

4. The government enacted changes to pavement café licensing under the Business and Planning Act 2020 and its associated “Guidance: pavement licences (outdoor seating)” as part of the national response to the Covid pandemic.

5. These changes aimed to deregulate pavement cafes and offer a streamlined process for applications at a time where hospitality venues were operating with limited capacity due to Covid restrictions.
6. Although the deregulated regime was initially meant to be temporary and devised as an emergency measure to support the hospitality sector, it has now been extended several times. The latest extension allows licences to be issued until the end of September 2023.
7. As a result of these extensions and as Covid restrictions were lifted, City of York Council undertook a review of the authority's local guidance and conditions for pavement café licensing.
8. The changes to the guidance were approved by Full Council on 15 December 2022, based on the approach recommended by Executive on 22 November 2022.

Current Policy

9. The current policy includes the following key requirements:
 - Cafés can only be 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 1980 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 process, on a case-by-case basis and all costs associated with required highway improvements would need to be borne by the applicant;
 - 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);

- The named licence holder has completed the ACT Awareness E-learning course (an online counter terrorism awareness course);
- Suitable barriers (compliant with the relevant British Standard – BS8300-1:2018) with tapping rails are required to enclose the licensed area;
- Cost: £100 charge per licence.

10. The review also tightened the enforcement process where a licence is breached, stating that up to two letters (notices) will be sent to licence holder asking for breaches to be addressed. If two letters have been sent for the same issue(s) and the licence is still not being complied with, the licence will be revoked.
11. All licences issued in 2022 expired at the end of December 2022. All venues had to reapply for a licence, with their applications considered under the updated licensing guidance, from January 2023.
12. By the end of February 2023, 69 licence applications had been received, of which:
 - 36 licences had been granted;
 - 10 applications had been refused; and
 - 23 applications were under review/consideration, generally due to missing information or the need to amend the layout, furniture, etc.
13. As licence applications are still being submitted, as Spring approaches, it is difficult to compare directly with the previous year when 114 pavement café licences in issue (in July 2022).
14. In January and February 2023, a total of 29 licence breaches/unlicensed cafes were recorded. Some of these issues were identified by CYC officers and others through complaints received from members of the public. All venues were written to as per the enforcement approach described in the updated guidance.

Next Steps

- **Enforcement**

15. The licensing team has been working with the Council's legal team to prepare for enforcement action where this has been identified as likely to be required due to current behaviours.
16. Once a licence has been revoked, or where cafes are operating without a licence, enforcement options available to the Council include:
 - Community Protection Warning (CPW) & Community Protection Notice (CPN). Breaching a CPN is a criminal offence and can result in a Fixed Penalty Notice being issued by designated council officers; and
 - Highways Act 1980 – prosecution at Magistrates Court.

- **Preparing for permanent changes to the licensing regime**

17. The Levelling up and Regeneration Bill introduced into Parliament in May 2022 proposes to permanently remove the need for planning permission, proposing to make the current temporary regime permanent. The Bill was at Committee Stage in the House of Lords in February 2023.
18. A few changes to the current regime are proposed in the Bill, including:
 - Increased pavement café licensing fees (from £100/licence currently to £500 for new applications and £350 for renewals);
 - Longer consultation and determination periods (from 7 days currently to 14 days);
 - Improved enforcement powers for councils (providing powers to the local authority to remove furniture if a premise is not abiding by its pavement licence conditions and hours).
19. The proposed enforcement powers are however not fully supported by local authorities, as reflected by the Local Government Association's support for the creation of a specific offence of breach of a pavement licence (dealt with by a fixed penalty notice), rather than by the power to seize and store furniture, which is what is currently proposed.

Consultation

20. The changes to the local guidance document which were approved by Full Council in December 2022 were subject to consultation with licence

holders as well as other groups. Any further changes to the licensing guidance or process would also be subject to consultation.

Council Plan

21. This report 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.

22. 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

23. Financial

There are no financial implications for this report. Any decision to change the licensing guidance or process would require a separate decision where financial impacts would be considered.

24. Equalities

The Council needs to take into account the Public Sector Equality Duty under Section 149 of the Equality Act 2010 (to have due regard to the need to eliminate discrimination, harassment, victimisation and any other prohibited conduct; advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it and foster good relations between persons who share a relevant protected characteristic and persons who do not share it in the exercise of a public authority's functions).

An Equality Impact Assessment was carried out and provided for the decision to change the licensing guidance in December 2022. Any further changes would require this assessment to be reviewed.

25. Legal

The legal powers and duties have been set out in the body of the report.

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Report **Date** 28/02/2023
Approved

Wards Affected: List wards or tick box to indicate all **All**

For further information please contact the author of the report

Background Papers

- 22 November Executive decision on pavement cafes (see Item 48):
<https://democracy.york.gov.uk/ieListDocuments.aspx?CIId=733&MIId=13292>
- City of York Council pavement café licensing – current process and guidance, available here: www.york.gov.uk/PavementCafeLicences

Annexes

No annexes provided.