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## Meeting of Executive Members for City Strategy and the Advisory Panel

26<sup>th</sup> March 2007

Report of the Director of City Strategy

### PAVEMENT CAFÉ LICENCES

#### Summary

1. This report brings to the Advisory Panel's attention permissions which are being sought by two organisations to operate pavement cafés for extended periods of time and proposes in response a revised Policy against which these and all future applications for licences should be judged.

#### Background

2. For a pavement café to operate on the Public Highway, Planning consent has to be granted **and** a license has to be issued by the Highway Authority. These are two entirely separate considerations and made under different legislation each with their own criteria. In non Unitary Authorities the determination of Planning consent and consideration of the possible grant of a Pavement Café licence is undertaken by two different Authorities. Since the creation of the City of York Council as a Unitary Authority 1996 both are of course considered by the same body – although within different sections of the same Department - and a highway license has automatically been issued for any application that has planning consent on the basis that elected Members had considered the matter and approved it. However, it is important to note that it is not an automatic right to hold a licence just because planning consent has been granted.
3. Until now this process has not caused any problems as the cafés operate mainly during the day and often within the footstreets. However, planning applications are beginning to come in for longer hours in order to take advantage of the changing night time culture and changes in legislation which govern how enclosed premises may be used. Applications are also being received which occupy extensive sections of the public highway. The effect of both effectively converts the affected public highway into privately controlled spaces that the Highway Authority still has to maintain. This additionally begins to call into question if the council is actually discharging its Statutory Duty to protect and assert the rights of people at large to 'Pass and Repass without let or hindrance' on any part of the highway.
4. The situation has now developed where, in some cases there may be no firm planning reasons to turn down an application (also a refusal could be challenged on appeal) but there can be reasons why the Highway Authority would want the highway kept clear in order to comply with its Network Management duties or to simply allow others to use the highway. This

confusion has extended to the Planning Inspectorate who granted permission on appeal relative to the grant of Planning consent to use the highway for one application in the city centre for Planning consent between 09.00hrs and 02.30hrs. There is no provision in the legislation for such a decision to be made binding upon any Highway Authority. It is therefore important to keep both issues separate and for the different areas of the council's responsibilities to be considered as individual issues.

5. There are at present 18 premises (café's, bars and restaurants) that have café licences and the number of tables they have ranges from 4 to 22. The annual fee for the highway licence is £450 regardless of the number of tables, area of highway in use or hours of operation. This is to rise on the 1 April to £464. Although the areas of highway are conditioned under the licences issued not to be available for use by those drinking alcohol they could be used by patrons wishing to have a smoke. This aspect has prompted at least one organisations to apply for a licence so that they could offer their customers smoking facilities which would otherwise be prohibited as all of their business activities take place within enclosed premises.
6. Members now have the situation where 5 of the 18 licensed cafes have planning consent and licences to occupy the public highway for in excess of 14 hours a day. One of these, the Blue Fly café on New Street has planning consent for the operation of a pavement café between 09.00 hours and 02.30 hours daily. This was granted on appeal and in accordance with the former practice a Pavement Café licence was granted by the Highway Authority to cover these hours. This business has now acquired additional premises adjacent to their existing ones which they intend to continue to operate and has sought Planning consent to operate a pavement café covering the same hours as granted on appeal. If granted this would mean that there would be permission for a pavement café for this business and one operated by another business that would occupy a continuous length of highway of some 180 metres.
7. McMillians on Rougier Street have planning consent (originally turned down by the West Planning Committee) for a pavement café to operate between 11.00 hours and 20.00 hours daily. This has never been implemented nor a Pavement café licence sought. Consent is now sought to extend these hours to 02.00 hours daily and to 03.00 hours on Friday and Saturday. The consent is sought to enable the area to be used as a smoking area. Members of the general public would have no access to the area and could not just 'walk off the street' into it as in a normal pavement café.
8. The applications previously granted and now being requested suggest that the City of York Council as Highway Authority needs to have a clear policy upon how its highways are used for pavement café activities and thus when a Highway Licence should be granted.

## **Options and Analysis**

- 9 The options available are set out below:
  - A. Allow the current practise to carry on as it does now with an automatic Highway licence being granted following the grant of Planning consent.

Whilst in the main this is unlikely to lead to difficulties as can be seen from paragraphs 6 and 7 above at the limits this could mean that private businesses were in effect using the public highway for their own personal gain for far longer than the general public could use that same space. This directly conflicts with the Highway Authority Duty to protect and assert the rights of the public to use its highways. In the case of the Blue Fly, out of every 24 hours the public would only be able to use it for 6.5 hours, the majority of which would be in the early hours of the morning. Effectively therefore this section of the public highway would be used for private gain at all reasonable times when the public have a right to use it. The Macmillians application is similar with between 6 and 7 hours public use a day, again mostly at times when the public would not have a need to use it. Such use could also present difficulties for delivery drivers and street maintenance.

This option is not recommended.

- B. Adopt a standard set of conditions which would redress the balance between the legitimate operation of a facility for the public to enjoy taking refreshments in the open air and the right of the public to use the public highway occupied by any facility. Applications for licences which would operate within these conditions could be delegated to Officers to determine. Those which did not would be referred to Members for determination.

This arrangement would allow the Highway Authority to make an assessment of a proposal on purely traffic management grounds and keep a distinction between the need to gain Planning consent and the need to obtain a licence.

This option is recommended.

## **Proposed Standard Conditions**

10 Annex A gives a list of standard conditions amongst which are:

- The use of the licensed area shall cease before 20.00 hours each day and shall not commence prior to 10.00 hours.
- No licence will be granted if the effect of this licence and any previously granted for premises in the same street, would be:

that in that street. the length of licensed pavement café would result in a continuous section in excess of 50 metres

or

where the public highway concerned is a paved island or square, the licensed area and any previously licensed area would occupy more than 33% of the publicly available space.

These conditions are in line with those used in many other Local Authorities throughout the country and are in some respects (mainly the hours of operation) less restrictive than found in some.

11 Adoption of these conditions and the two above in particular would mean that of those licences currently issued, 11 would need to be modified, either

slightly or substantially. This could be undertaken when the application next came up for renewal or alternatively members have the power to revoke the licence giving 3 months notice and ask the applicant to apply for a fresh licence in accordance with the new conditions. Annex B gives details of the licences currently issued and their hours of operation. It is recommended that the former course of action be adopted.

## **Corporate Priorities**

- 12 This matter is considered to be part of the city council's corporate priorities in relation to "improving the actual and perceived condition and appearance of the city's streets, housing estates and publicly accessible spaces".

## **Implications**

The implications of the recommendations in this report are as follows:

### **Financial**

- 13 There are no financial implications.

### **Human Resources (HR)**

- 14 There are no HR implications.

### **Equalities**

- 15 There are no equalities implications.

### **Legal**

- 16 A legal challenge may be possible against the council if it allows café's to operate unchecked at the expense of its duty to maintain an efficient traffic flow. "Traffic" within the meaning of the Traffic Management Act 2004 includes pedestrians and cyclists as well as vehicles. Section 137 of the Highway Act 1980 makes it a specific offence to obstruct the public highway without lawful authority. Thus any object placed upon the highway, unless covered by a specific exemption (such as litter bins) is legally an obstruction and the person who placed it liable for prosecution either by ourselves or the police unless correctly authorised. Only the Highway Authority has the power to authorise the use of the highway for pavement café's.

### **Crime and Disorder**

- 17 There are no direct crime and disorder implications. Provisions within the licence however require the pavement café to be removed from the highway immediately if requested by the Council, Police or other emergency service. The licence holder is also responsible for the conduct of customers. The licence holder is required to ensure that they are not a nuisance to or annoy users of, the highway or tenants of adjoining premises and abuse can result in immediate termination of the licence.

### **Information Technology (IT)**

- 18 There are no IT implications.

## Property

- 19 There are no property implications as the highway is not owned by the Highway Authority.

## Other

### Cleansing

- 20 Conditions in the licence require the area licensed to be maintained in a clean and tidy condition and also to take appropriate steps to prevent the highway from becoming littered as a result of trading activities.

## Risk Management

- 21 In compliance with the Council's risk management strategy. There are no risks associated with the recommendations in this report.

## Recommendations

- 22 That the Advisory Panel advise the Executive Member to:
- a. adopt Option B in paragraph 10
  - b. adopt the Standard Conditions described in Annex A
- and
- delegate to Officers the granting of a pavement café licence that complies with these conditions.
- c. Decisions on applications for pavement café licences that do not meet these conditions be referred to this Committee for a decision.
  - d. Current licences are to be allowed to remain in being until their date of renewal at which time the licence is only to be granted in accordance with recommendations [b]and [c].

Reason: So as to protect the Highway Authorities position in relation to the discharge of its Statutory Duties.

## Contact Details

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Report Approved  Date 26/3/2007

Specialist Implications Officers: Legal – Mark Blackburn/Martin Blythe, Legal Services

Wards Affected:

All

For further information please contact the author of the report

**Background Papers:**

**Annexes:**

Annex A –Set of Standard Conditions for pavement Café licences

Annex B – details of Pavement Café licences issued to date.



## Information Points and Pavement Cafes Highway Licence

### Standard Conditions

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- 1 For streets with footways and carriageways, the maximum width of any licensed area shall not exceed one third of the usable width of the footpath. A minimum unobstructed footpath width of 1.8 metres must be provided for safe and convenient pedestrian movement. This distance being, measured from the edge of the licensed area to any significant amount of street furniture (such as lamp posts, bollards, parking meters etc). Where there is a heavy pedestrian flow additional footpath space may be required.
- 2 For fully pedestrianised streets a minimum width of 1.8 meters or two thirds of the total width of the public highway, whichever is the greater, must remain free and unobstructed to facilitate pedestrian movement. This figure may be increased where there is a heavy pedestrian flow. The unobstructed route shall fall equally either side of the centre line of the highway to ensure the space available for tables and chairs is shared equally between premises on each side of the street.
- 3 Only the licensed and designated area shall be used for trading.
- 4 Only tables, chairs and umbrellas associated with tables and small potted plants shall be placed within the designated area. No other furniture other than receptacles shall be placed within this area.
- 5 The license holder will ensure that the designated area is maintained in a clean and tidy condition. The license holder shall also take appropriate precautions to prevent the highway from becoming, littered as a result of trading activities.
- 6 The license holder will be responsible for the conduct of customers. They must not be a nuisance or annoy users of the highway or tenants of adjoining premises.
- 7 All tables and chairs shall be removed at the end of each trading day.
- 8 Suitable storage for tables and chairs; shall be identified by the applicant at the time of application for a license.
- 9 Tables and chairs shall be durable and suitable for outside use. No damaged furniture should be used.

- 10 Tables, chairs and umbrellas shall not be positioned so as to obstruct sight lines for drivers of vehicles at junctions.
- 11 No speakers or music shall be permitted.
- 12 No electrical cables shall be run along the ground in such a way that they create a trip hazard or are susceptible to mechanical damage.
- 13 A clear pathway of at least 1.2 metres wide shall be maintained to allow entrance and exit from shop premises.
- 14 Only refreshments shall be provided.
- 15 The area shall be vacated immediately if requested by the Council, Police, other emergency service, Statutory Undertaker etc. without any liability for compensation, refund of application fee, or damage arising.
- 16 Planning permission must be obtained for the use of the highway for a pavement café and for any structural alterations to the building or its appearance. This includes the fitting of electrical signs and canopies.
- 17 No canopy or umbrella shall be lower than two metres in height and shall be adequately secured.
- 18 The issue of a license does not give, or imply any permission to supply intoxicating liquor in the street.
- 19 The use of the licensed area shall cease before 20.00 hours each day and shall not commence prior to 10.00 hours.
- 20 Notice of application for a new licence shall be displayed in the window of the premises to which it relates for a period of 21 days.
- 21 The licence shall be displayed in the window of the premises to which it relates.
- 22 The licence shall be rendered invalid, should the license holder cease to own the premises or cease employment.
- 23 No licence will be granted if the effect of this licence and any previously granted for premises in the same street, would be:
  - that in that street. the length of licensed pavement café would result in a continuous section in excess of 50 metres
  - or



where the public highway concerned is a paved island or square, the licensed area and any previously licensed area would occupy more than 33% of the publicly available space.

**ANNEX B**

# Pavement Café's

2006 - 2007  
2007 - 2008

Name	Location	Planning Permission	Licence expires	No. of Chairs	No. of Tables	No. of Parasols	Hours of licence
Roman Baths	9 St Sampsons Sq, York	Yes	8th April 2007	60	15	0	8:00 till 23:30 Mon-Sat, 8:00 till 23:00 Sun
Mana Greek Restaurant	10 St Sampson Sq, York	Yes	24th August 2007	40	10	0	8:00 till 23:30 Mon-Sat, 8:00 till 23:00 Sun
Browns of York	Davy Gate/ St Sampsons Sq, York	Yes	31st May 2007	40	10	0	9:00 till 18:00 Mon-Sat
York Archaeological Trust	Jorvik Centre, Coppergate	Not Required	8th August 2007	32	8	4	9:00 till 17:30 Mon-Sun
Kennedy's Café Bar	1 Little Stonegate	Yes	3rd May 2007	18	9	0	11:00 till 20:00 Mon-Sun
The Spurriergate Centre	St Michaels Church, Spurriergate	Yes	14th May 2007	16	4	0	11:00 till 16:00 Mon-Fri, 10:30 till 16:00 Sat, 12:00 till 16:00 Sun

Harkers	1 St Helen's Sq	Yes	31st December 2007	14	7	0	11:00 till 20:00 Mon-Thur, 11:00 till 19:00 Fri, 10:30 till 19:00 Sat, 12:00 till 19:00 Sun
First Stop York	St Helen's Sq, York Minster Area and Coppergate	Not Required	9th July 2007	N/A	N/A	N/A	9:30 till 16:30 Mon-Sat, 10:00 till 16:00 Sun
Reeds Tea Rooms	30/32 High Petergate	Yes	4th June 2007	40	10	0	9:30 till 19:00 Mon-Sun
Dusk	8 New Street	Yes	31st August 2007	12	4	4	9:00 till 2:30 Mon-Sun
Rioco (Penny's)	10 Feasegate	Yes	7th May 2007	16	4	0	11:00 till 16:00 Mon-Sat, 12:00 till 16:00 Sun
Starbucks (Coney Street)	14 Coney Street	Yes	22nd May 2007	20	5	4	11:00 till 23:30 Mon-Fri, 10:30 till 23:30 Sat, 12:00 till 23:00 Sun
O'Briens Irish Sandwich Bar	32 Parliament Street	Yes	17th May 2007	24	6	2	8:00 till 19:00 Mon-Sun
The Blue Fly	10a New Street	Yes	20th February 2007	24	6	0	9:00 till 23:00 Mon-Sat, 10:00 till 22:30 Sun
Capaldi's Café Bar	12 College Street	Yes	31st December 2006	24	6	0	9:30 till 18:00 Mon-Sun

St Williams Restaurant	5 College Street	Yes	6th May 2007	24	6	6	10:00 till 22:00 Mon-Sun
Starbucks (Coppergate)	16 Coppergate Walk	Yes	19th October 2007	12	5	0	10:18:00 Mon-Sat, 11:00 till 18:00 Sun
York Art Gallery	Exhibition Square	Yes	20th October 2007	88	22	4	10:00 till 16:30 Mon-Sun