

Officer Decision – Corporate Director of Place

7 September 2021

Report: Pavement cafes licensed under the Business and Planning Act 2020

As part of its response to Covid 19, the government has enacted changes to pavement café licensing under the [Business and Planning Act 2020](#) and the associated [Pavement licences: guidance](#).

These changes aim to offer a streamlined process for pavement café licences, enabling hospitality businesses to make use of additional space on the adopted highway where possible. Licences under the Act were initially due to expire at the end of September 2021 but Regulations have since been updated, extending the scheme until the end of September 2022 ([see here](#)).

Pavement cafes currently licensed on the adopted highway in York are all operating under this licensing regime, which is applicable in lieu of the pre-existing planning regime, until September 2022.

If licence holders decide to continue using outdoor seating in the adopted highway after September 2022, planning permission will likely be required and different requirements may apply.

National and local conditions for pavement café licences

The [pavement café guidance](#) for York sets out a number of national and local conditions for furniture to be placed on the adopted highway in accordance with the licence. The most relevant conditions in terms of enforcement issues are summarised below:

- National conditions
 - **No obstruction** – Non-vehicular traffic has to be able to enter and pass along the highway, and to have normal access to premises adjoining the highway. Permitted traffic has to be able to pass and utilities need to be able to access their apparatus in, on or over the highway.
Clear routes of access to be maintained - Taking into account the needs of disabled people and the recommended minimum footway widths and distances required for access by mobility impaired and visually impaired people as set out in [Section 3.1 of Inclusive Mobility](#);

- **Smoke free seating** – Requiring licence-holders to make reasonable provision for seating where smoking is not permitted;
- Local conditions
 - **Emergency access** - For fully pedestrianised streets a minimum width of 3 meters must remain free and unobstructed to facilitate emergency vehicles. This figure may be increased where there is a heavy pedestrian flow;
 - **Times of use** – The times and days of the week when the pavement café use is permitted will be stated in the licence. This might be linked to footstreet hours for example;
 - **Furniture** - Only approved tables, chairs, bins, and barriers (as detailed in the licence) shall be placed within the designated area. No other furniture (such as advertising boards) shall be placed within this area.
Barriers must be placed at each end of the pavement café area. These should be stable and sturdy canvas separator on metal uprights with a tapping rail (no protruding parts, no ropes or chains, high colour contrast preferable), to help with accessibility for visually impaired highway users.

All furniture must be removed at the end of the approved hours of use. No equipment is to be stored on the highway at any time outside the licensed hours;
 - **Outdoor heaters** -If outdoor heaters are to be used in the licensed area, they need to be included in the application and must be electric infrared heaters (meeting BS Standards BS EN 60529:1992 for electric heaters). Gas heaters or fire pits are not permitted.

Proposed approach to enforcement

What should be the focus of enforcement action?

Officers have identified a range of issues with current pavement café licence holders who are not conforming to the conditions set out in the licence and accompanying guidance document. Key issues for which officers recommend taking enforcement action are:

- **Furniture set out or stored on the adopted highway, outside the premises, outside of the licensed times of use** - This is a

significant issue in the footstreets as the times of use are generally linked to the start and end of the pedestrianised period. When licence holders set out their tables and chairs too early, pedestrians have to step into the carriageway, in conflict with delivery vehicles and other traffic which are still permitted;

- **Area where furniture is set out differs/is larger than agreed in the licence** – This is a significant issue as it can impede wheelchair access as well as access for authorised vehicles and emergency services; and
- **Furniture in use differs from that specified in the licence** – The majority of issues under this category relates to premises not installing the required barriers to demarcate the pavement café area or barriers not being installed as agreed in the licence. The guidance requires these barriers to be: stable and sturdy canvas separator on metal uprights with a tapping rail, to help with accessibility for visually impaired users. This is in line with Government guidance ([Inclusive Mobility](#)) and has been identified as an important addition to pavement cafes to enable people who live with sight loss to navigate the city centre streets. T

Taking enforcement action – what are the options?

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.

The Highway team proposes the following actions:

- The Covid Marshalls (available until the end of September 2021) would support the enforcement work by checking that licence holders adhere to the terms of their licence whilst on their rounds and reporting breaches to the Highway team to issue enforcement notices where required;
- Up to 3 letters (notices) to be sent to licence holder
- If three letters have been sent for the same issue(s) and the licence is still not being complied with, the licence would be revoked, the decision to do this would be made by Head of

Programmes and Smart Place. 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:

- Furniture set out or stored on the adopted highway outside the premises outside of the licensed times of use;
- Area where furniture is set out differs/is larger than agreed in the licence;
- Required barriers (with tapping rail) not provided.

We would also propose to write to licence holders to:

- Remind them of their duty to make reasonable adjustments to enable access to their shops and services for people with reduced mobility under the Equality Act 2010;
- Share information on how licence holders can support the work of Council and Police services on security and counter-terrorism:
 - Licence holders and staff should complete the award winning ACT E-learning course <https://ct.highfieldelearning.com/>
 - Licence holders should check CCTV systems to ensure they are compliant and work correctly.

Decision Sought: The Highway team requires confirmation of the enforcement approach to be adopted as outlined above under the Business and Planning Act.

Improving accessibility

In the footstreets, where pavement cafes have been licensed to use the footway, this generally requires highway users to use the carriageway, coming on and off the footway when accessing shops and venues.

In streets with kerbed footways, wheelchair users as well as people using other types of mobility aids and some people using pushchairs, require a dropped kerb to be able to move between the footway and the carriageway or raised crossing points to be able to move from the footway on one side of the street to the footway on the opposite side. The use of the footways as pavement cafes has increased this need as pavement cafes act as footway closures, forcing highway users to move to the footway on the other side of the street or onto the carriageway.

In the footstreets area, accessibility issues specifically caused by pavement cafés have been identified mainly in the following streets:

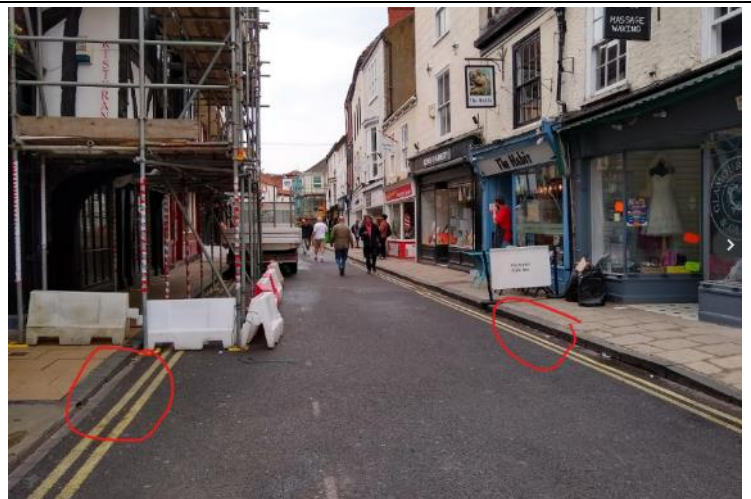
- Fossgate (required changes have been addressed in a separate report and design work is progressing to build five additional pairs of dropped kerbs);
- Goodramgate; and
- Low Petergate.

For Goodramgate and Low Petergate, the provision of additional dropped kerbs at several locations on the streets would support pedestrians crossing the street and accessing shops and venues, especially for users with reduced mobility and those using pushchairs. Some small changes to licensed areas may also be required.

The following pages illustrate the changes required and present an initial cost estimate for the proposed changes.

Proposed changes on Goodramgate

Pair of dropped kerbs or raised crossing required between Northern Antiques and Glamour, before the Habit (exact location TBC)



Pair of dropped kerbs or raised crossing required between Watkinsons and William Brown



Pair of dropped kerbs or raised crossing required between Savers and Bombay Spice



Happy Valley Chinese, reduce licensed area to use existing dropped kerb (no tactiles)



One dropped kerb in front of Traveling man to meet Tesco dropped kerb opposite (no tactile on existing dropped kerb)



Proposed changes on Low Petergate

One dropped kerb required outside the York Sweet Shop



Pair of dropped kerbs or raised crossing required between Oxfam and empty unit next to La Vecchia Scuola



Pair of dropped kerbs or raised crossing required between Solita and La Vecchia Scuola



Estimated costs

Costs are estimated to be up to £24,000 as presented in the table below.

Item	Unit cost	Units required		Cost estimate	
		Low	High	Low	High
Design work for dropped kerbs (Stats checks, design)				£1,500	£3,000
Construction cost per dropped kerb (with tactiles)	£1,500	12	14	£18,000	£21,000
Total cost (estimated)				£19,500	£24,000

Works will be funded from the LTP budget.

Proposed programme

Officer decision – August/Sept 2021

Residents, business and Ward Councillors consultation – September 2021

Confirmed approved scheme and detailed design work – October/November 2021

Construction – December 2021/January 2022

Decision Sought: The Highway team seeks approval for this work outlined above to be commissioned and funded from the LTP budget.

Equality impacts

The Equality Act 2010 aims to protect people from discrimination in the workplace and in wider society.

This includes the Public Sector Equality Duty, which means that public bodies have to consider all individuals when carrying out their day-to-day work – in shaping policy, in delivering services and in relation to their own employees. It also requires that public bodies have due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations between different people when carrying out their activities.

The Equality Act 2010 covers the following protected characteristics: age, disability, gender reassignment, marriage and civil partnership,

pregnancy and maternity, race, religion or belief, sex and sexual orientation.

This proposal aims to enable enforcement action to be taken where licence holders are in breach of their pavement café licence and to make small scale changes to Goodramgate and Low Petergate to improve accessibility. As the changes are relatively modest, it is not necessary to undertake a full Equality Impact Assessment but the impact of the proposals on protected characteristics has been considered as follows:

- Age – Positive impact as additional dropped kerbs and enforcement action should improve access to shops and services for people with reduced mobility;
- Disability – Positive impact (as above). Some people living with a disability have also noted that pavement cafes have in some cases improved access to services, for example where hospitality venues without step-free access now offer tables and chairs outside. Although pavement cafes can also reduce accessibility where they block a footpath, do not have adequate barriers, or reduce access to a dropped kerb;
- Gender – Neutral;
- Gender reassignment – Neutral;
- Marriage and civil partnership– Neutral;
- Pregnancy and maternity - Positive impact (as above, when considering the potential impact on women who may experience pregnancy related impairment to mobility, especially in later stages of pregnancy). Additional dropped kerbs will also benefits parents of young children if they use pushchairs;
- Race – Neutral;
- Religion and belief – Neutral;
- Sexual orientation – Neutral;
- Other socio-economic groups including :
 - Carer - Positive impact (as above);
 - Low income groups – Neutral;
 - Veterans, Armed Forces Community– Neutral.

Author of Report:
Helene Vergereau

Chief Officer responsible:
James Gilchrist