

Report of the Director of Transport, Environment and Planning

Review of pavement café licensing process and guidance

Summary

1. This report presents options for the Committee to review the Council's pavement café licensing process and guidance following the commencement of the pavement licensing provisions laid out in the Levelling Up and Regeneration Act 2023.
2. The provisions included in the 2023 Act introduce a permanent pavement licensing regime to replace the temporary provisions introduced by the Business and Planning Act 2020. The new legislation retains most of the features of the temporary regime but introduces some changes and is supported by updated government guidance.
3. The differences between the temporary regime and the new permanent regime, including options for the local authority to tailor the permanent regime to their specific circumstances, are presented in this report, with recommendations on changes to be made to the local process and guidance.

Recommendations

This section should set out clearly the author's recommendation for a particular option and the reasons why.

4. The Committee is asked to approve Option 1 by:
 - 1) Noting the legislative changes to the pavement café licensing regime and the budget decision made by Council in February 2024 (concerning the pavement café licence fees and licence duration under the permanent regime);

2) Approving the following changes to the CYC local guidance:

- a. Continue to implement the local guidance where a minimum available width of 1.5m is generally required on footways (with an exception for level surface streets in the footstreets area, where cafes can be licensed to occupy the full width of a footway during pedestrianised hours);
- b. Applications to be treated as new licence applications (at the cost of £500/year) where there is a different licence holder, different premises and/or different terms;
- c. Update the guidance to state that where internal seating is provided, toilets should be available for customers but accepting that exceptions can be made for premises which serve drinks and food as take away premises, without internal seating and without the ability to provide customer toilets;

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

Background

5. The current pavement café licensing process and guidance was initially implemented as a temporary scheme under emergency government legislation (Business and Planning Act 2020) during the Covid pandemic. This emergency legislation deregulated the process for pavement cafes and removed the requirement for planning permission, which ordinarily was used to assess proposals and gather feedback from interested parties through the planning consultation process. Where planning consent was granted, annual licences were then issued by the highway authority under Part VIIA of the Highways Act 1980.
6. The Business and Planning Act 2020 removed the requirement for planning permission for removable furniture temporarily placed in the highway adjacent to hospitality sector premises (such as cafes, restaurants, and bars). The Act streamlined the process by reducing the consultation and determination periods, making it easier and cheaper for businesses to obtain pavement café licences.

7. The Council's licensing process and guidance was last updated in 2022 through an Executive decision (22 November 2022, available here, under item 48: <https://democracy.york.gov.uk/ieListDocuments.aspx?CId=733&MId=13292>) followed by Council approval on 15 December 2022 (available here: <https://democracy.york.gov.uk/ieListDocuments.aspx?CId=331&MId=13697>).
8. The Levelling Up and Regeneration Act 2023 introduced a permanent pavement licensing regime in England to replace the temporary provisions introduced by the Business and Planning Act 2020. The pavement licensing provisions laid out in the 2023 Act commenced on 31 March 2024.
9. The options included in this report were presented to the Executive Member for Transport on 19 July 2024. The Executive Member then decided to recommend that the proposed changes are made to the local guidance, and presented to the Licensing Committee for approval, as changes to the pavement café licensing guidance have been delegated to the Licensing and Regulatory Committee by Council (see the Executive Member's decision under Item7, here: <https://democracy.york.gov.uk/ieListDocuments.aspx?CId=1061&MId=14883>).
10. As these provisions introduce some changes to the licensing regime and are accompanied by updated Government guidance (available here: www.gov.uk/government/publications/pavement-licences-guidance), the Council now needs to consider updates to its pavement café licensing process and guidance.
11. Key changes to be considered are:
 - a. **Licence fees** – Local authorities are free to decide the level of pavement café application fees up to a cap which is set nationally. Under the temporary regime, the fees were capped at £100. The 2023 Act has increased the cap to £500 for first time applications and £350 for renewal applications. This increase in fee cap is intended to allow local authorities to recover the costs of processing, monitoring and enforcing licences.

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

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

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

- b. **Licence duration** – The 2023 Act enables local authorities to grant pavement licences for a length of their choosing up to a maximum of two years. The government’s updated guidance encourages local authorities to grant businesses the maximum two years unless there is a good reason to do otherwise.

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

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

Annual fees were approved by Council at the Budget meeting for 24/25 which took place on 22 February 2024 (additional information is available here, under item 80, the fees are set out in Annex 3: <https://democracy.york.gov.uk/ieListDocuments.aspx?CId=733&MIId=13934&Ver=4>).

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

other means and retain the proceeds. This is a legislative change and will be implemented automatically.

The current CYC guidance states that up to two letters (notices) will be sent to licence holders asking for breaches to be addressed. If two letters have been sent for the same issue(s) and the licence is still not being complied with, the licence will be revoked. Once a licence is revoked, the furniture placed in the highway becomes an unauthorised obstruction with limited enforcement options available to the local authority under the Highways Act 1980.

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

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

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

The recommended approach (included in Option 1) is to continue with the current local guidance where a minimum available width of 1.5m is required on footways (increased to 2m in some areas). The local guidance also provides an exception for level surface streets in the footstreets area, where cafes can be licensed to occupy the full width of a footway during pedestrianised hours.

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

The recommendation is to continue with the current approach where applications are considered in the order that they are received and validated (once all the required information has been submitted – first come, first served approach). As new applications are received and validated in a street/area, officers consider the cumulative impact and the impact of licences on all highway users, including disabled people.

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

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

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

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

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

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

Based on this guidance, the recommended approach (included in Option 1) is to consider the following applications as new applications:

- i. Different licence holder;
 - ii. Different premises;
 - iii. Different terms, including change of area location, area size, furniture, hours/days of operation.
- b. **Provision of toilets** – Current CYC local guidance states “Toilet facilities must be available for customers to use on the premises”. In practice, some applicants have not been able to meet this requirement where they operate mainly as a take-away business (for example take away beverage stalls or shops such as bubble tea shops or take away food stalls).

The recommended option (included in Option 1) is therefore to update the guidance to state that where internal seating is provided (without the pavement café area), toilets should be available for customers, but that exceptions can be made for premises which serve drinks and food as take away premises, without internal seating and without the ability to provide customer toilets.

Consultation

13. The most recent consultation related to pavement café licensing and accessibility issues was carried out by consultants Mima who were appointed as independent access consultants by the Council to carry out a series of workshops in March and May 2024 for York residents and city centre businesses. The aim of the research was to:
 - a. Understand what short-term improvements could be made to improve city centre access;
 - b. Review the process to reinstate Blue Badge holder access in the city centre and provide recommendations for improvement;
 - c. Identify longer term options to make the city centre more accessible.
14. Additional consultation feedback has been considered including: the Blue Badge Postcard Survey, results from the online Blue Badge access consultation Phase 1 and Phase 2, and data from the Local Transport Strategy consultation, as well as feedback from businesses (including the

responses to the consultation carried out in 2022 when the licensing guidance was last updated).

15. There are clearly differences of opinion between some businesses and some highway users on what priority should be given to pavement café licences versus clear carriageways and footways for people to travel on.
16. Feedback from Blue Badge holders and disabled people generally requested further vehicular access into the city centre and additional areas for vehicles carrying a Blue Badge to park. Many also requested more public seating and resting places (which may reduce the space available for pavement cafes).
17. The consultation responses highlighted that for disabled people, pavement cafes can be a barrier when not implemented in an accessible manner. For example, they can impact visually impaired people navigating the space safely and can narrow pavement widths for wheelchair users and other mobility aid users.
18. In contrast, businesses highlighted that these spaces were important for business and generate an income, particularly in the spring and summer months.

Options and analysis

19. This section considers the options available to the Committee in more detail. It does not consider the changes which are required due to the change in legislation (no options are available to the Committee for these) nor the changes which were agreed by Council (fee levels and licence duration).
20. **Available footway width** - The text included in the Government guidance on pavement café licensing has changed with the update to the guidance in April 2024. The updated guidance states: *“Section 4.2 of Inclusive Mobility sets out that footways and footpaths should be as wide as practicable, but under normal circumstances a width of 2000mm is the minimum that should be provided, as this allows enough space for two wheelchair users to pass, even if they are using larger electric mobility scooters. Local authorities should take a proportionate approach if this is not feasible due to physical constraints. A minimum width of 1500mm could be regarded as the minimum acceptable distance between two obstacles under most circumstances, as this should enable a wheelchair user and a walker to pass each other”*.

21. Option 1 is to continue with the approach set out in the Council local guidance where a remaining available width of 1500mm is always required (except in footstreets where the carriageway and footways are level during pedestrianised hours) and this is increased to 2000mm in specific areas (for example near a high footfall junction).
22. This is the recommended option as it has been in place in York since 2023 (following the Council decision in December 2022) and has generally worked well, enabling a significant number of licences to be issued (in line with the objectives of the Council's "My City Centre Strategy"), whilst enabling disabled people and other highway users to access streets and premises as required. 73 premises currently hold a pavement café licence in York (the majority of these are in the city centre).
23. Alternatively, the Committee could ask for a further review (Option 2). The review could consider adopting a stricter approach to the implementation of Inclusive Mobility guidance and require a minimum available footway width of 2000mm in most cases. As most of the city centre streets have relatively narrow footways, this would mean that many of the businesses currently licensed to use part of the footway would not be able to have a licence any longer. An initial assessment of existing licences shows that approx. 20 pavement café licences would need to be revoked and 11 licensed areas would need to be reduced.
24. **New/renewal applications** - The Government guidance indicates that applications should be treated as new licence applications (£500/year) where there is a different licence holder, different premises and/or different terms.
25. The recommended option (Option 1) is to directly apply this guidance as any changes in these characteristics require the Council to undertake additional checks (for example on insurance cover, counter-terrorism training, and suitability of the area requested or furniture proposed). As the cost of a new licence is higher than a renewal, this means that the Council will be closer to achieving cost recovery.
26. Under Option 2, the Committee could ask officers to review the list of changes, which result in an application being treated as a new application, to reduce the cost to the businesses (for example, where only the name of the licence holder is changing) but this would reduce cost recovery for the Council.

27. **Toilet provision** - The current local guidance document requires licence holders to provide toilets for their customers. In recent months, officers have received applications for pavement cafes from premises, which do not have customer toilets currently, as they operate mainly as take away premises (for example bubble tea shops and food trailers). These premises can be eligible for a pavement café licence under the current legislation but may not be able to provide customer toilets.
28. The recommended option (Option 1) is therefore to amend the local guidance document to state that where internal seating is provided, toilets should be available for customers but that exceptions can be made for premises which serve drinks and food as take away premises, without internal seating and do not have the ability to provide customer toilets.
29. The recommended option enables officers reviewing licence applications to ensure that customer toilets are provided wherever possible but also provide some flexibility where this is not possible.
30. Alternatively, under Option 2, the Committee could decide to keep the current requirement for customer toilets to be provided for any premises with a pavement café licence. This would preclude some of the businesses from being granted a pavement café licence.

Council Plan

31. The proposals included in this report relate to the Council Plan for 2023-27 commitments, specifically:
- a. Equalities and Human Rights, which states *“We will create opportunities for all, providing equal opportunity and balancing the human rights of everyone to ensure residents and visitors alike can benefit from the city and its strengths”*; and
 - b. Health, which states: *“We will improve health and wellbeing and reduce health inequalities, taking a Health in All Policies approach, with good education, jobs, travel, housing, better access to health and social care services and environmental sustainability. We will achieve better outcomes by targeting areas of deprivation, aiming to level opportunity across the city”*.
32. They also relate to the Council’s *“My City Centre Strategy”* (2021-2031) which aims to *“support outdoor eating and café culture in the city centre”* (objective 3C) and to *“improve accessibility through a wide range of measures including more dropped kerbs, improved surfaces and seating and better facilities for disabled people”* (objective 6D).

33. At the national level, they relate to the following legislation, policies and guidance:

- a. Levelling Up and Regeneration Act 2023, Business and Planning Act 2020, Part 7A of the Highways Act 1980; Equality Act 2010;
- b. Pavement licences: guidance published by the Department for Levelling Up, Housing & Communities (available here: www.gov.uk/government/publications/pavement-licences-guidance/pavement-licences-guidance);
- c. Inclusive mobility: making transport accessible for passengers and pedestrians, by the Department for Transport (available here: www.gov.uk/government/publications/inclusive-mobility-making-transport-accessible-for-passengers-and-pedestrians).

Implications

34. The following implications have been identified for the recommended options:

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

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

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

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

The legislation does not permit pavement café licence fees to be linked to the number of tables and chairs or to the size of the area covered by the licence. Some businesses therefore get much higher returns from their investment in a pavement café licence, where it enables them to use a large area (for example on Parliament Square).

The financial impact on businesses is mixed. Where businesses are able to operate with a pavement café licence, business owners/managers generally state that this helps with their business's revenue and viability. Where licences have been revoked or licence areas reduced, businesses have stated that this has had a significant impact on their revenue.

b. **Human Resources (HR)** – no implications identified as this report does not consider any increase in compliance monitoring and enforcement.

c. **Legal** - The relevant legislation is referred to in the report.

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

d. **Procurement** – no implications identified.

e. **Health and Wellbeing** – no implications identified apart from the link to the Council Plan's wider Health commitment.

f. **Environment and Climate action** – no implications identified

g. **Affordability** – no implications identified

h. **Equalities and Human Rights**, See impacts identified in the EQUIA

i. **Data Protection and Privacy** – no implications identified

j. **Communications** – Where changes to the local guidance for pavement café licensing are recommended and then approved by the Licensing Committee, the relevant webpages will be updated

and licence holders will be sent the relevant information as required (communications with the businesses are generally via email).

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

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

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

Risk Management

- 35. There are no significant risks identified for the update of the licensing guidance and process as it addresses a change in legislation and other small changes to an established process.

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Approved

Wards Affected:

All

All wards, although Guildhall ward will be impacted the most for the review of the licensing process and guidance as the majority of pavement café licences are issued for city centre businesses.

For further information please contact the author of the report

Background Papers:

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

Annexes

Annex A: Equalities Impact Assessment (EIA)