
**REVIEW OF POLICIES AND CONDITIONS IN RESPECT OF PAVEMENT CAFÉS
IN THE BOROUGH OF DARLINGTON**

**Responsible Cabinet Member - Councillor Bill Dixon
Neighbourhood Services Portfolio**

Responsible Director - Paul Wildsmith, Director of Corporate Services

SUMMARY REPORT

Purpose of the Report

1. The purpose of this report is to invite Members to consider modifications to the Council's current policies and conditions in respect of Pavement Cafés in the borough of Darlington.

Summary

2. This report provides information for Members in relation to improving Town Centre Pavement Café provision by proposing changes to policies and conditions in respect of the licensing of Pavement Cafés. The changes are minimal. The placing of barriers to contain the café is in accordance with the outcome of consultations with Highways and Darlington Association on Disability (DAD), and the majority of changes will benefit the licence holders, eg the simplification of the conditions, advice re frontagers and a less prescriptive requirement in respect of pavement café furniture.

Recommendation

3. It is recommended that the revised policy and standard conditions as detailed in **Appendix 1** to the attached report be approved.

Reasons

4. To provide simplification for applicants and encourage the provision of Pavement Cafés in the town Centre of Darlington.

Equalities Impact Assessment

5. A full Equalities Impact Assessment has been undertaken. In addition consultation has taken place with Darlington Association on Disability. They have been part of the consultation process for this report and are consulted on each application for a Pavement Café.

Paul Wildsmith
Director of Corporate Services

Background Papers

The Highways Act 1980

The Local Government (Miscellaneous Provisions) Act 1982

The Council's policy in respect of Pavement Cafes

Appendix

The proposed street trading policy and revised conditions

Pam Ross : Extension 2647

S17 Crime and Disorder	This report has no implications for crime and disorder
Health and Wellbeing	There are no issues which this report needs to address
Sustainability	There are no issues which this report needs to address
Diversity	There are no issues which this report needs to address
Wards Affected	The proposals affect the town Centre ward
Groups Affected	The proposals affect all communities
Budget and Policy Framework	This report represents a change to Council policy
Key Decision	The proposals do not represent a key decision
Urgent Decision	This is not an urgent decision
One Darlington: Perfectly Placed	Improved Pavement Cafe provision may attract new business to the Town Centre
Efficiency	The proposed changes to Policy and conditions should simplify the application process, require less referrals to the Council's licensing Committee and clarify the responsibilities placed on licence holders.

MAIN REPORT

Background

6. The licensing of Pavement Cafés is regulated by the Highways Act 1980 (the 1980 Act). Section 115 E of the 1980 Act permits the Council to issue Pavement Café Licences for areas of the public highway. Section 115E (3) prohibits a Council from granting such permission unless the consent of frontagers with an interest is obtained, however, consent must not be unreasonably withheld. If there is no response to a consultation within 28 days either to give consent or refuse to give consent then consent must be treated as being unreasonably withheld. Section 115F permits the Council to require payment for, and place conditions on, any grant of licence. Section 115K deals with any failure to comply with terms of the licence and permits the Council to serve a notice requiring remedy of the breach.
7. The licensing of Pavement Cafés in the town centre is central to the establishment of a Pavement Café culture. Such provision can add to the vibrancy of the town centre and make a positive contribution to the street scene. At the time of writing this report there were 16 Pavement Cafés licensed.
8. Current policy is based on decisions made by Members in 2000 following a pilot scheme around the Market Square in 1999. On 13 March 2000 the Community Protection Committee approved the introduction of a Pavement Café licensing scheme and a guidance document which contained the standard conditions applied to such licences.

Information and Analysis

9. The licensing regime regulates the siting and extent of Pavement Cafés and each application is subject to consultation with the Police, Fire Service, Highways, Planning Services and Environmental Health. In response to concerns expressed by some members of the trade and the general public about the management of Pavement Cafés, officers have revisited the existing policy and conditions and have identified a need to simplify and clarify the requirements both for making an application and for operating a Pavement Café.
10. The creation of the Pedestrian Heart of Darlington Town Centre has raised issues about the status of Pavement Cafés and in particular the standard requirements, guidance and conditions associated with Pavement Café licences. Officers and some traders would suggest that if Pavement Cafés are to flourish in the town centre there is a need to raise standards and ensure that any Pavement Café provision harmonises with the new landscape.

The Issues

11. The issues for Members to consider are the proposed policies and conditions as detailed at **Appendix A** to this report. This Appendix details the policies and conditions that are currently applied to Pavement Café licences as well as the proposed revisions and additions. In summary these proposals update the current policies and conditions as follows:
 - (a) The use of barriers to denote the area of highway to be included in the Pavement Café to become a standard condition (**new**).

Rationale: The barriers act as a containment for the Pavement Café furniture and prevent spillage into areas including roads etc. They also assist people with visual impairment in identifying the obstacles on the highway. Although it is not a current condition it has increasingly been placed on licences as a special condition by the Council's Licensing Committee.

- (b) The requirement that all furniture used in the Pavement Café shall be made of wood and metal to be amended to require that furniture be of high quality and be approved by the Council.

Rationale: The original condition was introduced to ensure that low value, plastic domestic furniture was not used. Given the improvements in the quality of furniture for outdoor use the sanction of Council approval will retain the standard and permit a more diverse range of furniture to be considered.

- (c) The requirement for risk assessments to become part of the initial application process (**currently a condition to produce whenever required**).

Rationale: This ensures that applicants have considered potential risks and factored them out of their plans prior to the opening of the Pavement Café. It also ensures all statutory requirements are met.

- (d) Advice about obtaining consent from neighbouring business (**consent is required in law before a licence can be granted**).

Rationale: Consent is frequently withheld by neighbouring businesses, leading to referral to the Council's Licensing Committee. It is common for negotiations to then take place and in all but one case agreement has then been reached. If applicants check with their neighbour's first and establish a problem it provides an opportunity to address it and compromise, hopefully leading to fewer hearings.

- (e) A simplification of the operational conditions (**using plain English**).

Rationale: Many of the current conditions are lengthy and not user friendly. The simplification of the Council's requirements will make it easier for licence holders to be aware of their obligations.

- (f) An acknowledgement that areas such as Skinnergate may be exempt from the 2 metre clearance required between the premises and the pavement café and/or the highway.

Rationale: To ensure that the pavement café provision in Skinnergate continues to flourish

Outcome of Consultation

12. Consultation has been carried out with Darlington Association on Disability (DAD), the Town Centre Board and all Pavement Café Licence holders. In addition Officers from Highways and Environmental Health have also been consulted. Results of the consultation are as follows.
13. The Highways Officer has suggested that, in respect of the use of barriers the following should be added to any guidance issued to an applicant.

“If the proposal is for the physical barrier to be on posts that are to be within sockets in

the public highway the applicant will be required to obtain a licence under Section 50 of the New Roads and Street Works Act 1991. There will be a separate charge for this licence and contact must be made with the Assistant Director Highways and Engineering to discuss this matter.”

14. This requirement will apply only to those Pavement Cafés where barriers have to be sunk into the highway – something that is unlikely given that barriers will be expected to be moved at the close of the Pavement Café. Each application will, however, be considered on its merits and in the event of such a requirement being necessary a licence will be required to enable the barriers to be so positioned. The current cost of such a licence is £300.
15. DAD has suggested that the prohibition of the use of A Boards should be more prominently mentioned in any guidance document and has also requested that it is made clear to Applicants and licence holders that Pavement Cafés cannot be used for other purposes, especially not for the parking of vehicles.
16. One Pavement Café licence holder has expressed concern that other licence holders are not complying with the Council’s current policies and conditions, particularly in respect of the use of glassware, lack of parasols etc and also concern that some Pavement Cafés are being used as an extension of the bar area.
17. Another pavement café licence holder has supported the proposed policies and conditions but expressed concern at the original proposed increase in fees. These have now been reduced in response to this and other concerns and are detailed at paragraph 21 below.
18. The Town Centre Board recognised the importance of Pavement Cafés to both the daytime and evening economy and was supportive of the proposals.

Enforcement

19. The enforcement of Pavement Cafés is reactive rather than proactive. Officers respond to complaints and investigate them accordingly. The level of fees set in respect of Pavement Cafés does not cover the cost of planned inspection visits and fees from other sources of licensing cannot be used to support such an activity. Officers are also mindful of the Government’s policy of less regulation and therefore do not currently propose to amend the current enforcement strategy relating to Pavement Cafés. This means that Officers will continue to react to complaints. If, however, officers do notice any infringement when passing by a Pavement Café it will, of course, be dealt with. In addition Officers from other service areas who visit premises for other inspections will be encouraged to undertake basic checks as part of their own inspection regime.

Fees

20. Pavement Café licences are granted for a maximum period of one year. The fee must accompany the application and is non refundable should the application fail. The current fee for a Pavement Café licence, regardless of size is £160. This does not cover the administrative and enforcement costs related to the licensing of the Pavement Café. The fees are regardless of the size of the pavement café and the number of tables and chairs

contained within its designated area. In Darlington the size of café ranges from two tables to in excess of eight tables.

21. In the current financial year the majority of complaints have been in respect of the larger cafes, resulting in enforcement visits and referrals to the Licensing Committee. It was, therefore, initially proposed that a sliding scale of fees be introduced. A consultation exercise was undertaken with the current licence holders and this resulted in objections particularly in respect of those cafes with more than two table capacity. In the light of the current economic climate a flat rate fee has been retained for the 2009-2010 financial year.

PROPOSED REVISIONS TO THE POLICIES AND CONDITIONS RELATING TO PAVEMENT CAFES

POLICIES

- a Licences shall be issued for a maximum period of one year (**current**).
- b Application fees shall not be refunded should the application be unsuccessful (**current**).
- c On certain event days the Pavement Café may be required to close. Should this be required a notification will be sent from the Council's Public Events Safety Advisory Group (PESAG) advising of the times and reason for the closure (**amended to include PESAG**).

STANDARD CONDITIONS FOR PAVEMENT CAFÉ LICENCES

Creating a Boundary

- 1 The boundary and layout of the Pavement Café as defined by the plan attached to the Licence shall be adhered to at all times. A copy of the licence with this plan must be displayed at the premises at all times (**current**).
- 2 All activity associated with the Pavement Café shall be within the boundary including tables, chairs, menu boards, advertising etc (**current**).
- 3 The boundary of the pavement café shall be marked by a physical barrier, the design and dimensions of which must be agreed, in writing, by the Council (**new**).
- 4 A minimum of 2.0 metres should normally be available between the edge of the Pavement Café and the edge of any adjacent carriageway or vehicle route although the Council may waive this requirement in certain locations eg Skinnergate. If it is proposed that the Pavement Café will have a pedestrian route passing through it, then that route should be as straight as possible and free from obstruction (**current**).
- 5 Emergency routes from adjacent buildings and the applicant's premises should not be obstructed by the Pavement Café (**current**).
- 6 No permanent obstruction shall be allowed in the footways within the Pavement Café area that may cause a safety hazard to users of the public highway. The use of Advertisement Boards is prohibited (**current**).

Managing the Pavement Café

- 7 The maximum permitted hours of operation will be between 8.30 am and 9.00 pm with a drinking up period of 30 minutes (between May – August, the maximum hours will be 8.30 am until 10.00 pm) (**current**).
- 8 The licensee must take out Public Liability insurance cover for the Pavement Café and shall indemnify the Council against all claims in respect of injury, damage or loss arising out of the granting of permission, (eg damage to the highway or highway furniture) to a minimum value of £5,000,000 unless such claims arise out of the Council's own negligence (**current**).
- 9 All furniture used in the pavement café shall be of high quality and approved by the Council (**amended from wood and metal**).
- 10 If the area of the Pavement Café is in direct sun between 12 noon and 3.00 pm parasols should be included as part of the design to protect customers from excessive ultra violet radiation (**current**).
- 11 Only patrons seated at tables shall be served or permitted within the Pavement Café (**current**).
- 12 Patrons shall be offered the choice to purchase both food and drink at the Pavement Café and menus shall be prominently displayed showing availability and price of food and drinks served (**current**).
- 13 If the outside area is not licensed in accordance with the Licensing Act 2003, patrons should be asked to order food and drink from inside of the premises. The order can then be served to them by a waitress/waiter (**current**).
- 14 The licensee shall keep the area within the boundaries clean and litter free. Any litter that escapes from the inside of the licensed area to the outside of the area shall be collected by the Licensee (**current**).
- 15 Suitable litter/refuse bin(s) shall be provided within the Pavement café area at all times of operation. The Licensee shall be responsible for disposing of all waste produced at the Pavement Café (**current**).
- 16 The Licensee shall ensure tables are immediately cleared when customers have finished eating to minimise attraction of birds and flying insects (**current**).
- 17 The playing of amplified music shall not be permitted within the Pavement Café area (**current**).
- 18 The Licensee shall be responsible for the conduct of people, both patrons and employees, within the Pavement Café area. Unruly or rowdy behaviour must not be tolerated (**current**).

- 19 At the end of each trading session the entire Pavement Café area shall be cleaned (**current**).
20. All furniture must be removed from the Pavement café and stored safely and securely, away from the highway when the Pavement Café is not operational (**current**).

Service

- 21 Standard types of crockery ie china cups and saucers as used within the premises may also be used within the Pavement Café (**current**).
- 22 Alcoholic and soft drinks to be consumed outside of the premises or within the Pavement Café must be served in plastic glasses or paper cups (**current**).