



DARLINGTON
Borough Council

General Licensing Committee Agenda

9.30 am, Tuesday, 29 April 2025

Council Chamber, Town Hall, Darlington, DL1 5QT

Members of the Public are welcome to attend this Meeting.

1. Introductions/Attendance at Meeting
2. Declarations of Interest
3. To approve the Minutes of the meeting of this Committee held on 28 January 2025 (Pages 3 - 6)
4. To approve the Minutes of the meetings of the General Licensing Sub Committee held on 28 January 2025 (Pages 7 - 8)
5. Pavement Cafe Policy Review – Report of Executive Director, Economy and Public Protection (Pages 9 - 58)
6. SUPPLEMENTARY ITEM(S) (if any) which in the opinion of the Chair of this Committee are of an urgent nature and can be discussed at this meeting
7. Questions

A handwritten signature in black ink, reading 'A. C. Wennington', with a horizontal line underneath.

Amy Wennington
Assistant Director Law and Governance

Thursday, 17 April 2025

Town Hall
Darlington.

Membership

Councillors Ali, Crumbie, Mrs Culley, Curry, Donoghue, Dulston, Haszeldine, Kane, Lawley, Lee, Mahmud, K Nicholson, Ray and Toms.

If you need this information in a different language or format or you have any other queries on this agenda please contact Hannah Miller, Democratic Officer, Resources and Governance Group, during normal office hours 8.30 a.m. to 4.45 p.m. Mondays to Thursdays and 8.30 a.m. to 4.15 p.m. Fridays Email: hannah.miller@darlington.gov.uk or telephone 01325 405801

GENERAL LICENSING COMMITTEE

Tuesday, 28 January 2025

PRESENT – Councillors Kane (Chair), Crumbie, Mrs Culley, Curry, Dulston, Lawley, Mahmud, K Nicholson and Toms

APOLOGIES – Councillors Ali, Haszeldine and Ray

ABSENT – Councillors Donoghue and Lee

OFFICERS IN ATTENDANCE – Jim Langley (Principal Lawyer - Litigation), Colin Dobson (Licensing Manager), Mark Walton (Licensing Enforcement Officer), Sgt C Dickenson (Durham Constabulary), PCSO Nicole Bell (Durham Constabulary), PC Gav Rutter (Durham Constabulary) and Hannah Miller (Democratic Officer)

LG16 DECLARATIONS OF INTEREST

There were no declarations of interest reported at the meeting.

LG17 TO APPROVE THE MINUTES OF THE MEETING OF THIS COMMITTEE HELD ON 17 DECEMBER 2024

Submitted – the Minutes (previously circulated) of the meeting of the General Licensing Committee held on 17 December 2024.

RESOLVED – That the Minutes of the meeting of the General Licensing committee held on 17 December 2024 be approved as a correct record.

LG18 TO APPROVE THE MINUTES OF THE MEETINGS OF THE GENERAL LICENSING SUB COMMITTEE HELD ON 17 DECEMBER 2024

Submitted – The Minutes (previously circulated) of the meeting of the General Licensing Sub-Committee held on 17 December 2024.

RESOLVED – That the Minutes of the meeting of the General Licensing Sub-Committee held on 17 December 2024 be approved as a correct record.

LG19 LICENSING FEES AND CHARGES FOR 2025-2026

The Chief Executive submitted a report (previously circulated) inviting Members to determine the fees related to licensing.

It was reported that fees were based on the cost recovery of administering and where appropriate enforcing the relevant legislation relating to such licenses; and Councils were responsible for administering a range of licences and for the majority of these regimes the costs were recovered through fees set by each Council and paid by the licence applicant.

It was also highlighted that locally set fees were a vital means of ensuring that full costs could

be recovered, reducing the risk of a subsidy from local tax payers, and that businesses did not pay more than they should.

It was reported that legislation permitted the Council to recover all or part of the costs of providing the licensing service, including its administration and control (i.e. enforcement or supervision), however it did not permit the Council to profit from its fees and charges, thus ring fencing the income to the licensing service.

It was highlighted that some fees, notably in relation to the Licensing Act 2003, were set nationally within legislation and the Council had no control, and noted that whilst the Gambling Act 2005 allowed local authorities to set fees, regulations stipulated a maximum amount that can be charged.

The submitted report outlined the provisions around taxi licensing, with particular reference made to the increase in taxi drivers in Darlington that were licensed by other authorities, which made it difficult to predict the potential income as Darlington did not receive a fee for those private hire vehicles. Members also noted that Uber had been granted a licence to operate in Darlington; that the Council now had an integrated digital application process for taxi licensing, improving efficiency; and there had been changes to procurement and greater scrutiny of home-to-school contracts for transport drivers, leading to an increase in work for enforcement officers to ensure the safety of children using this service.

It was reported that a review of taxi licensing fees predicted a surplus of £16K at the end of the financial year; this was well below the predicted surplus for the same period in the previous year; and it was proposed that fees across the taxi and private hire driver licensing regime be increased by 5 per cent for the 2025-2026 period, whilst those of licensing vehicles and operators remain unchanged.

The submitted report also provided information on general licensing fees; a review of the general licensing fees predicted a year end deficit of £13K; and it was proposed that fees across all general licensing regimes under local authority determination be increased by 5 per cent.

The report also provided details of the licensing of primates. Members noted that from April 2026 it would be illegal to keep any primates unless they have licence under the new Regulations Animal Welfare (Primate Licenses) (England) Regulations 2024; there would be a phased introduction of these Regulations to allow Local Authorities to develop an application and inspection regime; and this legislation allows Local Authorities to determine fees in respect of any application and inspection. The proposed fees for the licensing of primates was £241 for a period of three years.

Discussion ensued regarding the costs for developing the digital systems for on-line application forms; following a query relating to the proposed 5 per cent increase in fees Members were advised of the necessity for this increase for licensing activity; and Members were informed of the reasoning for not increasing the fees for Private Hire Operators.

RESOLVED – (a) That the proposed fees, as appended to the submitted report, be approved to commence on 1 April 2025.

(b) That the Primate Licence be approved.

LG20 QUESTIONS

Members entered into a discussion regarding the recent taxi safety operation; and following a request, Members were provided with an update in relation to the complaint made against several taxi marshals in Darlington.

RESOLVED – That the discussion and update be noted.

This page is intentionally left blank

GENERAL LICENSING SUB COMMITTEE

Tuesday, 28 January 2025

PRESENT – Councillors Mrs Culley, Curry, Dulston, Kane and K Nicholson

OFFICERS IN ATTENDANCE – Jim Langley (Principal Lawyer - Litigation), Colin Dobson (Licensing Manager), Mark Walton (Licensing Enforcement Officer), Sgt C Dickenson (Durham Constabulary), PCSO Nicole Bell (Durham Constabulary), PC Gav Rutter (Durham Constabulary) and Hannah Miller (Democratic Officer)

LGS18 ELECTION OF CHAIR FOR THE PURPOSE OF THE MEETING

RESOLVED - That Councillor Kane be elected Chair for the purpose of this meeting.

LGS19 DECLARATIONS OF INTEREST

There were no declarations of interest reported at this meeting.

LGS20 EXCLUSION OF THE PUBLIC AND PRESS

RESOLVED – That, pursuant to Sections 100A (4) and (5) of the Local Government Act 1972, the public be excluded from the meeting during consideration of the ensuing item on the grounds that it involves the likely disclosure of exempt information as defined in exclusion paragraphs 1 and 7 of Part 1 of Schedule 12A to the Act.

LGS21 PRIVATE HIRE DRIVER LICENCE APPLICATION FOR GRANT (EXCLUSION PARAGRAPHS 1 AND 7)

Ref 01/25 - The Assistant Director Economic Growth submitted a report (previously circulated) to give consideration to an application for a Private Hire Driver Licence in light of previous convictions.

The driver attended the meeting and responded to Members questions in relation to the above, and to why they felt that they were a fit and proper person to hold a Private Hire Driver Licence.

In reaching their decision, Members took into consideration the Council's Licensing Policy, which sets out the Council's stance on the Relevance of Convictions, Cautions and Endorseable Fixed Penalties in assessing whether an applicant is a fit and proper person; the Council's Private Hire and Hackney Carriage Licensing Policy and Procedures; and Section 51 (1)(a) of the Local Government (Miscellaneous Provisions) Act 1976.

After careful consideration Members decided to grant the driver a Private Hire Driver Licence. In doing so, Members noted that the driver's last conviction for violence was eighteen years ago and that the driver had turned their life around since the last offence had been committed. Members decided that a warning as to future conduct should also be issued due to the nature of the driver's previous convictions.

RESOLVED – That the Private Hire Driver licence be granted and the driver be issued with a warning letter in respect of future conduct and warned that if any further convictions, cautions, warnings or reprimands are received they would be referred immediately to the General Licensing Sub-Committee.

**GENERAL LICENSING COMMITTEE
29 APRIL 2025**

PAVEMENT CAFÉ POLICY REVIEW

Purpose of Report

1. To invite Members to consider a report in respect of:

A decision to finalise a revised Pavement Café Policy to be approved by Full Council for implementation.

2. The schedule and attached appendices to this report give details of the request for consideration.

Human Rights Act

3. When considering matters relating to the grant of a licence and the placing of conditions on licences, the Committee must consider whether the decision affects an individual, group, or Company's Human Rights as set out in the Convention and if it does, whether the interference with those rights is permissible by reason of the justifications set out in the Convention. In addition, consideration must be given to whether the interference is proportionate.

Legal Implications

4. There are no issues that the Assistant Director, Law and Governance, considers need to be brought to the specific attention of Members, other than those highlighted in the report.

Crime and Disorder Act 1998 Section 17

6. The contents of this report have been considered in the context of the requirements placed on the Council by Section 17 of the Crime and Disorder Act 1998, namely, the duty of the Council to exercise its functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area.

Recommendation

7. Members are requested to finalise the amended policy following public consultation and recommend its approval to Full Council for implementation.

Mike Poulter
Executive Director, Economy and Public Protection

Background Papers

Business and Planning Act 2020
Highways Act 1980
Equality Act 2010
Management of Health and Safety at Work Regulations 1999
Pavements for People
The Terrorism (Protection of Premises) Bill 2024-25
The Tobacco and Vapes Bill
ADPH North East Position Statement on Nicotine Vaping

Council Plan	This policy will maintain the legal framework when dealing with pavement café applications
Addressing inequalities	The proposals will have no additional impact on equality of opportunity for the disabled public. Equality Act screening assessment has been carried out
Tackling Climate Change	This report has no impact on the Council's carbon impact.
Efficient and effective use of resources	This report has no impact on the Council's Efficiency Programme.
Health and Wellbeing	This policy will address health concerns caused by smoking raised at a local and national level
S17 Crime and Disorder	This policy will address issues specifically relating to the prevention of crime and disorder
Wards Affected	The proposals affects pavement café licences throughout the Borough
Groups affected	The policy does not have a direct impact on any particular group
Budget and Policy Framework	This report represents no major change to Policy
Key Decision	The proposals do not represent a key decision
Urgent Decision	This is not an urgent decision

Impact on Looked After Children and Care Leavers	This report has no impact on the Council's impact on Looked After Children and Care Leavers
--	---

Colin Dobson x 5988

This page is intentionally left blank

GENERAL LICENSING COMMITTEE
29 APRIL 2025

PAVEMENT CAFÉ POLICY REVIEW

Purpose of the Report

1. The purpose of this report is to invite Members to approve a revised Pavement Café Policy following public consultation, for a final decision on implementation by Full Council (**Appendix 1**).

Background

2. On 13 March 2000, Darlington's Community Protection Committee approved the introduction of a pavement café licensing scheme and a guidance document that contained standard conditions applied to such licences. The standard conditions within the Policy were reviewed by Full Council on 16 July 2009 when they were simplified and on the 20 March 2014 a further update of conditions was approved.
3. The Council's policy in respect of the licensing of pavement cafes in Darlington was designed to enhance the leisure provision for residents and visitors to Darlington and add to the vibrancy of both the day and evening economy of the town centre. Well operated pavement cafes are attractive venues for families to enjoy refreshment and add to the ambiance of the town centre.
4. The licensing of pavement cafés was regulated by the Highways Act 1980, however this has recently been superseded by The Business and Planning Act 2020, which was made permanent on 31 March 2024. This Act was introduced to assist the hospitality trade recover from Covid-19 restrictions by using outside space to increase capacity when social distancing was essential. It achieved this by simplifying and speeding up the application process. A pavement café licence is bespoke to each premises but includes two mandatory conditions required under this Act. These are:
 - No obstruction
 - Smoke free seating

- 5. This Act has reduced the consultation and decision making time for pavement café licence applications from 28 days public consultation to 14 days, with a further 14 day determination period. It places a maximum fee that can be charged of £500 for a new licence and £350 for it to be renewed and it also allows licensing authorities to issue licences for up to two years (previously required to renew annually). When this (temporary) Act was initially introduced, Darlington’s Licensing Committee made a decision for pavement café licences to be issued free of charge. A new fee structure was approved in 2023 to be implemented when the Business and Planning Act was made permanent.
- 6. Prior to the Business and Planning Act, Licensing issued nine pavement café licences, which has been a fairly consistent number over the years. With the introduction of the Act it grew to 32 premises, however this has now reduced to an average of 20, as pavement cafes do not form part of the business model for some premises who initially took advantage of a free licence. Each licence is approved by the Highways Department, Police and Darlington Association on Disability (DAD) following consultation.

Consultation Process

- 7. Throughout the time of Covid restrictions being eased, Licensing were cognizant of the dynamics within Darlington and particularly the town centre licensed trade. It has been clear that pavement cafes have been a huge success and contributed greatly to the economic recovery. It has also highlighted how our policy needs to adapt to take into account these changes and align it with future development plans.
- 8. Licensing have been liaising closely with key stakeholders and asking how our current policy can be improved whilst maintaining the vibrancy pavement cafés have brought to the town. These proposed amendments, which also take into account legislative changes, have been made as a result of those discussions and highlighted in a summary below, along with the rationale for change.

Summary of proposed changes to Pavement Café Policy

Proposed change	Rationale
Updated introduction and condition to take into consideration the protection of Publicly Accessible Spaces (PALS)	This will need to be considered in all applications in anticipation of Martyn’s Law requirements

Mandatory cycle lanes not to be used for outside space	Taking into account changes to the transport infrastructure
Advertisement of gambling services and vaping products to be prohibited	Representations from Public Health and Trading Standards due to the harms they can cause to vulnerable people
A-boards or advertising signs or any other unsightly or unapproved items are not to be placed on or adjacent to the pavement café area or in lieu of the café area not being utilised.	Representations from disability groups and this would not be in keeping with the vision for Darlington Town Centre. This is in line with Darlington's <i>Pavements for People</i> guidance document
High quality furniture made from a composite material may also be considered on a case by case basis.	Composite materials have developed in recent years and can provide a good alternative to metal or wood
Tables, chairs, parasols, barriers, etc. shall not be stored on the highway when the pavement café is not open or when the furniture is not in use unless, in exceptional circumstances, where permission has been granted following consultation with key stakeholders.	Prevent anti-social behavior late into the night where people may congregate. Also prevent loose furniture being used as weapons. There may be circumstances in future development plans where this may be accommodated on a case by case basis
In some circumstances, it may be appropriate for larger freestanding parasols or outdoor shade structure covering several tables at once to be used	Covid restrictions demonstrated that the use of gazebos were an effective and viable alternative to parasols in some locations
The use of electric heaters will be considered subject to a risk assessment taking into account the siting of the heaters, location of electrical points, cables and protection from the weather.	There are occasions where these can be safely used and help reduce emissions
A minimum width of 1.5 meters could be regarded as the minimum acceptable distance between two obstacles or edge of carriageway in certain locations with approval of key stakeholders.	Department for Transport guidance, Section 4.2 Inclusive Mobility and government pavement café licence guidance 2024. This will still provide space for wheelchair access and give key stakeholders the opportunity to assess on a case by case basis before approval.
A collaborative approach may be considered where a number of small pavement cafes wish to combine their space into one pavement café area provided they all consent, and this will only	As the town centre develops, smaller areas i.e. the Yards will not be disadvantaged and remain compliant with policy

be subject to approval if all key agencies agree. Where granted, should problems occur because of this agreement the Council reserves the right to require barriers to delineate each pavement café.	
Soft drinks may be allowed in bottles on the provision that they are removed and safely disposed of immediately after the contents have been consumed.	This was proposed by trade representative as it supports families using pavement cafes where alcohol is not the main feature.
There will be a zero tolerance no smoking policy for all pavement cafes. A no smoking sign will be displayed at the entrance and a sign will be placed on each table. Allowing customers to vape will be at the discretion of the licence holder, however it is recommended that a vape free area is retained for those customers who do not wish to inhale the aerosol of those vaping around them.	Representations from Public Health and is a proportionate response to help reduce smoking (pavement cafes are not 'beer gardens'). Having smoke-free outdoor dining areas enhances the appeal for customers with families and for non-smokers. It also supports those who have taken the steps to quit and want to maintain a smoke-free lifestyle. Allowing vaping supports the use of these products as an anti-smoking tool and there is no evidence that passive inhalation is harmful in outside settings
In an initial application for a pavement café licence, applicants will be asked to identify an area where they will direct smokers to if practicable.	Whilst accepting that some people still wish to smoke, this area will be considered acceptable if it is away from those who may be affected by the smoke.
Remove the requirement for food to be served.	Business and Planning Act make it clear that pavement cafes are provided for food and/or drink. The provision of food can create an additional burden on premises who will ordinarily only serve drink.
No requirement for litter bins however where provided they should have a lid to prevent the contents being blown by the wind and prevent flying insects being attracted to the location. Bins should be made of non-combustible materials to reduce the risk of accidental fires or arson.	Tables are cleared by staff and rubbish is taken away to commercial bins.
Allow low level background music with sound amplification equipment, however anything beyond that will require approval	Allow a pleasant ambiance but prevents issues of excessive noise and nuisance,

from Environmental Health. Television sets are not allowed in the pavement café area	allowing customers to enjoy the outside space
Television screens inside the premises will not be positioned to make them visible from the pavement café unless otherwise agreed in writing by the Council following consultation with key agencies. Where consent has been granted, the Council reserves the right to withdraw this at any time where there are concerns for public safety.	Live sports can present challenges for police and local authority, adversely affecting those wanting to enjoy the outside ambiance. There remains a flexibility on a case by case basis for these to be permitted, provided all key agencies are in agreement
Terminal hour to be increased from 10.30pm until 11.00pm	This will allow premises to align their pavement café licence with their alcohol licensing hours and aid the removal of street furniture to inside the premises
Requirement for the licence holder to complete counter terrorism awareness training	Advice and guidance that is being introduced into the hospitality trade as a result of the proposed Martyn's Law

9. On 17 December 2024 this Licensing Committee approved a draft revision of the Pavement Café Policy, including the above proposals, to be released for public consultation, and this took place from 24 December 2024 until 28 February 2025. It was available on Darlington Borough Council website and widely publicised through both local and social media. Notification was also sent to key stake holders and Members with a link to the consultation. A list of those direct consultees is at **Appendix 2**.

10. Thirty-one formal responses were received and these have been compiled in a table at **Appendix 3** for consideration.

11. Further responses were received from County Durham and Darlington Fire Service highlighted below and have been incorporated into the draft policy for consideration:

- *Area of licence application should be assessed as to not restrict access to fire hydrants on pavements by use of furniture or barriers used for the purpose of the business.*
- *Bins should be made of non-combustible materials to reduce the risk of accidental fires or arson.*
- *The use of portable heaters should be addressed and incorporated into the fire risk assessment for the premise or business.*

12. DBC Highway Department also responded by making recommendations on the following:
 - *That any barrier/planter etc must be at least 500mm from the edge of a running carriageway*
 - *In areas where traffic is controlled by Traffic Regulation Orders and reinforced by raising/lowering bollards, in particular Skinnergate, but also to a lesser degree Blackwellgate, High Row, Bondgate and Northgate that if the bollard fails to rise to protect the area, the cafe licence would be suspended to protect pavement cafe users from potential unauthorised vehicle entry/vehicle strikes.*
13. Again, these have been incorporated into the policy for consideration.
14. During the consultation process it became very clear that the main concerns were on the issues of smoking and vaping. The Regulation Manager from Fresh and Balance, which is a regional programme dedicated to reducing harm from tobacco and alcohol in the North East of England, provided a formal response to the consultations and is reproduced in full at **Appendix 3**. In summary they have called for a 100% smoking ban in pavement cafes stating *"smokefree pavement cafes can contribute to an environment in which smokers are helped to quit and people are protected from tobacco-related harm, as well as creating more family friendly spaces. It will be very welcome if Darlington's pavement cafes become smokefree."*
15. They do however consider vaping as a proven aid to help people quit smoking and there is no evidence so far that vaping is harmful to those around them. As such they do not recommend a blanket ban on restricting vaping without stronger evidence of harm and they would be concerned that such restrictions may imply equivalence in harms between smoking and vaping, which may deter smokers from switching from smoking to vaping.
16. This position has been supported by Darlington's Director of Public Health and by the Association of Directors of Public Health North East.
17. On analysing the responses, 15 of the 31 respondents would support a ban on smoking and vaping, which is quantified as 48.3%
18. In line with Public Health guidance it is proposed that this revised policy has a complete ban on smoking in pavement cafes, however the decision on allowing vaping should be at the discretion of the licence holder.
19. Whilst this policy will not ban vaping it is felt that it should recommend licensees allow a vape free area for those customers who do not wish to inhale the aerosol of those vaping around them.

20. Further analysis of the 31 responses in relation to other key proposals is shown in the table below and demonstrates general support for those changes to policy.

Proposal	No. respondents making comment	Support proposal	Against proposal
Allow background music	17	13	4
Extend time to 11pm	11	10	1
No requirement for food	7	6	1

21. Amendments have been made to the policy for consideration following consultation.

Recommendation

22. Members are invited to approve this revised Pavement Café Policy with amendments to Full Council for implementation.

Mike Poulter
Executive Director, Economy and Public Protection

Appendices

Appendix 1 – Draft Pavement Café Policy
Appendix 2 – List of Consultees
Appendix 3 – Responses following consultation
Appendix 3 – Response from Fresh

Background Documents

Business and Planning Act 2020

Highways Act 1980

Equality Act 2010

Management of Health and Safety at Work Regulations 1999

Pavements for People

The Terrorism (Protection of Premises) Bill 2024-25

The Tobacco and Vapes Bill

ADPH North East Position Statement on Nicotine Vaping



Pavement Cafe Policy

(Proposed changes have been made in red)

Contents

	Page
Introduction	
Definitions	
Legal	
Private Land	
Rights of Access	
Advertising	
Size and Layout of Café	
Space Criteria – External	
Space Criteria – Internal	
Lighting	
Tables and Chairs	
Parasols	
Space Heaters	
Other Furniture	
Barriers	
Accessibility	
Alcohol	
Smoking	
Food	
Noise	
Fees	
Insurance	
Management	
Hours of Operation	
Application – Process	
Consultation	
Terms and Conditions	
Contacts	
Summary of Procedure Chart	
Standard Conditions	

DRAFT

1. GENERAL

Definition

Introduction

Alfresco dining is becoming a more widespread aspect of urban life and the presence of tables and chairs on the pavement can make a positive contribution by adding vitality, colour, life and interest to an area. Darlington Borough Council (DBC) supports and encourages the provision of pavement cafes in the town as they can help maximise the use of public spaces and aid the local economy by adding to the facilities offered to people who live, visit and work in Darlington.

The idea of a pavement café is to offer the public the chance to eat and/or drink outside. It is not aimed at increasing the overall size of a public house. If the Council considers that the overall effect of an application will result in a significant increase in customers, additional facilities may be required at the premises to meet that need eg. Toilets.

A pavement licence is granted by the local authority, which allows the licence-holder to place **removable furniture** over certain highways adjacent to the premises where the application has been made.

General requirements

Whilst the provision of pavement cafes is encouraged, it is important that they are properly administered and managed to ensure that they meet the high standards expected in Darlington. They should not obstruct the highway or create a hazard for pedestrians, especially for **those disabled people who have a visual or mobility impairment.**

The area to be used must take into account other needs in the immediate vicinity e.g. kerbside parking, bus stops and pedestrian crossings. Pedestrian needs must be paramount. The expanse of the pavement café must not conflict with any access or dropped crossings that are required for free passage of road users. Barriers and tapping rails should be positioned and maintained to the satisfaction of Darlington Borough Council and should be totally removed outside the permitted hours of operation of the café, **except where approval has been given following consultation with all interested parties/agencies.**

The pavement café should occupy an area directly in front of and be visible from the existing premises. Emergency exit routes from this premises and adjacent buildings should not be obstructed by the pavement café and emergency service vehicles must have access along all streets at all times, even in pedestrianised areas.

In general, all parts of the highway may be used for pavement cafés, assuming all safety and non-obstruction requirements are met. The exceptions are:

- Any carriageway or 'shared use surface'
- **Mandatory cycle lanes**
- Any highway verge
- Where width of the pavement makes it impractical/unlawful
- Where authorised street furniture makes it impossible

Licences will not normally be granted where:

- A significant effect on road safety would arise either from the siting of tables and chairs, or from customers visiting or leaving the licensed area.
- **Where access to the pavement café from the premises or use of facilities at the premises for customers involves crossing a live carriageway**
- Where there are concerns over the recorded level of personal injury accidents in the locality where the tables and chairs will be sited
- There is a conflict with Traffic Orders such as waiting restrictions
- The site obstructs either pedestrian or vehicular access, or traffic flows, or places pedestrians in danger when in use
- There would be a significant loss of amenity caused by traffic; noise; rubbish; potential for the harbourage of vermin; odour or fumes
- The tables and chairs obstruct the safe passage of users of the footway or carriageway
- The area to be licensed interferes with sight lines for any road users such as at road junctions, or pedestrian crossing facilities
- The site does not allow the licence holder, staff and customers to park in a safe manner
- The trading activity is carried out after dusk and the site is not adequately lit to allow safe access and egress from the site for both customers and staff
- The existing toilet and washing facilities are not adequate to accommodate an increased number of customers using the pavement café
- The Council is not satisfied that applicants have made satisfactory arrangements for the storage and collection of all refuse associated with their business

- The Council is not satisfied that applicants have made satisfactory arrangements for the storage of all tables and chairs off the highway without impeding any access or egress from the premises.

In considering the above matters, the standard guidance will be that a licence will only be issued if an unimpeded pedestrian route can be maintained at all times. The route shall ensure that all pedestrians and particularly those with a disability can maintain their normal path where feasible. All applications will be considered on their own merits.

Pavement café licences will only be issued to cafes, restaurants, public houses or other establishments that serve food and/or drink within the premises and employ sufficient staff to service the outside area.

Pavement café licences will not be issued to self-service premises or takeaway food shops.

The Council will carry out periodic inspections to make sure that all the terms and conditions of the licence are being observed.

DBC needs to take into consideration safety of all Publicly Accessible Locations (PALS) and this will be assessed before any pavement café licence is granted. Counter-terrorism awareness and training is available free of charge at <https://ct.protectuk.police.uk/>

A pre-licensing visit will be made to each premises upon receipt of an application for the grant, renewal or variation of a pavement café licence, to discuss the application process, the proposed operation of the cafe etc. to provide advice and information to the applicant.

Once the pavement café licence has been issued, further visits will be made to the premises to review the practical day-to-day operation of the café. An additional assessment will be made at the end of the 'season' to evaluate the operation of the café over that period and to determine if any revision of the operating schedule is necessary.

Any other visits to the premises will be made on a risk rated rationale determined by the findings of the above visits and/or complaints received during the period of the licence.

2. DEFINITIONS

In this Policy, the following phrases shall mean:

Pavement Café:	Pavement cafés are considered to be tables and chairs placed on the public highway (includes pavements) where food and/or drink is served.
Market Day:	As decided by the market management
Event Day:	Days when special events take place in the Borough
Normal Day:	Any day other than a Market Day and when no special event is taking place

3. LEGAL SITUATION

Prior to 2020 all pavement licences were issued under the Highways Act 1980. To assist businesses recover from the effects of Covid-19, the Business and Planning Act 2020 introduced temporary provisions to reduce barriers for restaurants and pubs using outside space when social distancing was required. The Business and Planning Act was subsequently made permanent (with amendments) by the Levelling-up and Regeneration Act 2023, which came into effect in 2024. Ordinarily, all pavement licences will now be issued under the Business and Planning Act 2020.

If the furniture is not removable and appropriate planning permission is in place, in exceptional circumstances and with approval of key agencies, an application must be made for permission under the Highway Act 1980. If granted under the Highway Act, all relevant conditions in this policy will apply.

Tables and chairs placed on the highway without permission are an illegal obstruction and the Council will take enforcement action in such cases.

Granting a licence to operate a pavement café does not imply an exclusive right to the area. The operator of the café should be aware that the Council reserves the right to gain access to the café area for cleaning, repairing and maintaining the highway or street furniture. Other statutory organisations may also require access for maintenance and repair of their equipment. The Council therefore reserves the right to suspend the licence temporarily if, for any reason, it becomes necessary.

If it appears to the Council that a person granted a licence has committed a breach of conditions, they may serve a notice requiring steps be taken to remedy that breach within a specified time. If the licence-holder fails to do so, the local authority may amend the licence, with the consent of the licence-holder; revoke the licence or take steps to remedy the breach.

Where the Council has incurred expenses in the exercise of its powers, those expenses, together with interest at a reasonable rate (the Council may determine this from the date of service of a notice of demand for those expenses) may be recovered by the Council from the licence holder.

Under the terms of the Highways Act 1980, the Council will not grant permission unless it obtains the express consent of interested frontages who may be materially affected by the proposal.

Section 115A(7) of the 1980 Act states that 'frontages' means: *the owners and occupiers of any premises adjoining the part of the highway on, in or over which facilities for recreation or refreshment or both, have been, are being or would be provided.*

Where required, express consent must be provided in writing before an application will be accepted.

The pavement café must operate in accordance with the conditions of the licence. Any breach of the conditions may lead to action by the Council and for a licence to be refused in the future.

On expiry of the licence, where there has been an application to renew the licence prior to its expiry, these conditions shall be deemed to remain in force whilst the premises lawfully continue to operate as if a licence was in force.

The Licence holder shall make no claims or charge against the Council in the event of the street furniture being lost, stolen or damaged except where it is attributable to negligence on the part of the Council or any of its Officers.

If a public liability insurance policy is not in force, the Council shall withdraw the licence for the period in which the policy is not in force and the licence holder may be liable to prosecution for obstruction of the highway.

The licence holder shall not cause or undertake any alterations to the highway surface.

The licence holder shall not assign, sub-let or part with this interest or possession of a licence.

The Council may at any time vary the conditions of a licence.

The Council will not grant a licence to persons under the age of 18 years.

The Council may suspend or terminate a licence if any of the conditions of the licence are breached.

A licence holder may terminate a licence at 21 days' notice by informing the Council in writing.

The licence does not take precedence over police powers to preserve order.

There is no statutory appeal process for these decisions, however as an internal review, any decision may be referred to the Licensing Committee.

4. PRIVATE LAND

This policy relates only to pavement cafés on a public highway. (Cafes on private land are not covered.) Although a pavement cafe licence is not required on private land, planning permission may be required if the structures and fittings are not of a temporary nature.

Land that might be considered private may in fact have become highway if the public have enjoyed access over it for at least twenty years without challenge, or if the Council have formally adopted the land. Before proceeding, it would be wise to check with the Planning Department to establish if planning permission is necessary and with the Highways Authority to confirm land ownership.

5. RIGHTS OF ACCESS

Authorised Officers of the Council and Police Officers shall have access to a pavement café at all times whilst it is in operation.

6. ADVERTISING

Advertising of **gambling services, vaping products** or irresponsible alcohol promotions will not be permitted on the barriers or furniture within the pavement café area. **Please note that tobacco advertising is already prohibited under the Tobacco Advertising and Promotion Act 2002.**

Advertising requires prior approval of Darlington Borough Council.

7. DESIGNING THE PAVEMENT CAFÉ

7.1 Size and Layout

The size and layout of the proposed pavement café will be dependent upon the characteristics outside the premises, particularly the space available, taking into account the needs of other users. It is not therefore appropriate for this Policy to set a standard size for the pavement café – see Layout Guide Dimension Criteria below:

Plans to be submitted with an application shall be drawn to scale, with dimensions, including areas required, the number of tables and chairs to be provided and pinch points detailing width and length. Space should be left between the tables and chairs to allow access for all, including wheelchair users.

The layout of furniture and means of enclosure will only be approved if adequate provision has been made for customers with disabilities.

The pavement café should:

- occupy an area directly in front of the Applicant's premises;
- be visible from these premises; and
- not extend beyond the width of its frontage (unless you have express consent from adjacent premises).

Emergency routes from adjacent buildings and the applicant's premises should not be obstructed by the Pavement Café. If the emergency services object to the proposal on safety grounds, it is very likely that the Council will refuse it.

7.2 Minimum Unobstructed Space Criteria

On a normal street, there must remain at least 2.0 metres (6.6 feet) of unobstructed space between the carriageway and the front of the pavement café to allow pedestrians to pass by safely.

On streets with high pedestrian usage, there must remain at least 2.75 metres (9 feet) of unobstructed space.

Each case will be judged on its merits and the unobstructed space will be set between 2.0 and 2.75 metres according to the frequency of pedestrian usage and other relevant parameters.

The requirement may however be waived by the Council in certain locations where it is considered safe to do so. A minimum width of 1.5 metres could be regarded as the minimum acceptable distance between two obstacles in certain locations with approval of key stakeholders.

A 1.5 metre wide access to the premises should be kept clear at all times.

7.2 Layout Guideline Dimension Criteria

A table and two chairs are deemed to occupy a minimum of 2.0 metres by 1.0 metre. (This does not include space for circulation.)

A table and four chairs are deemed to occupy a minimum of 2.0 metres by 2.0 metres. (This does not include space for circulation.)

An allowance must also be made for any other equipment and circulation requirements within the area applied for, particularly wheelchair access and movement within the pavement café area.

7.3 Lighting

The Applicant for a pavement café licence should, if intending to open beyond dusk, carefully consider the level of lighting in the proposed pavement café area. Whilst street lighting may be perfectly adequate for a public highway, it may need supplementing to allow the pavement café to operate safely.

Any additional lighting equipment and supply must be specified in the application to enable its impact upon the highway to be considered.

7.4 Tables and Chairs

All furniture shall be of high quality constructed of wood or metal and approved by the Council. High quality furniture made from a composite material may also be considered on a case by case basis. Parasols must not have any advertising on except for the name of the business. The advertising of

gambling services, alcohol or vaping products is not allowed. All proposed furniture and parasols will be inspected by an Officer from the Council to ensure that they are of satisfactory quality, construction and colour prior to a licence being issued.

When choosing furniture, regard should be given to the highway surface, as uneven or sloping surfaces may require more sturdy styles of tables and chairs, whilst narrow legs may cause damage to certain paving. It is advisable to discuss this at an early stage and certainly before any furniture is purchased.

Full details, including dimensions, materials and colours of proposed furniture, ideally accompanied by photographs or illustrations, will be required as part of the application.

The Council reserves the right to reject applications where inappropriate furniture is proposed.

Tables, chairs, parasols, barriers, etc. shall not be stored on the highway when the pavement café is not operating unless, in exceptional circumstances where permission has been granted following consultation with key stakeholders. If furniture is stored within the premises, any fire exit or escape route must not be blocked by stored furniture.

The Council reserves the right to refuse a licence to any applicant who has not made suitable arrangements for the internal storage and collection of refuse, and to withdraw the licence if the approved arrangements are not adhered to.

The layout of the café's furniture and means of enclosure must provide adequate access and circulation space for all customers including wheelchair users and those with pushchairs, buggies, etc.

Tables and chairs should not be located where they will impede drivers' sight lines or obscure highway signs.

All necessary items shall be removed from the highway if requested by a police officer, an authorised Council Officer or representative of a public utility. These items shall remain off the highway for as long as is required.

7.5 Parasols

To protect customers from excessive sun light, parasols shall be available for use at each table if the pavement café area is in direct sunlight, and a customer requests that a parasol be provided.

Parasol's metric dimensions, materials and colour must be specified as part of the application and their proposed locations shown on the site layout plan.

The design and colour of parasols will not be restricted to a particular type but they should be made of high quality materials and fabric and be of a uniform design and colour. Bright, garish or reflective colours should be avoided.

Parasols, when opened must not overhang the boundary of the pavement café and must remain closed in periods of high winds. They should be safely secured and contained entirely within the boundaries of the pavement café to ensure they do not cause an obstruction or create a hazard.

In some circumstances, it may be appropriate for larger freestanding parasols or outdoor shade structure covering several tables at once to be used. Each case will be dealt with on its merits.

Garden style umbrellas are not acceptable.

7.6 Space Heaters

If space heaters are used their dimensions, materials and colour must be specified within the application and their proposed locations shown on the site layout plan.

A formal risk assessment is required by the Management of Health and Safety at Work Regulations 1999 to support the application. This should be carried out by a competent person (someone who has knowledge of the law, British Standards, and Health and Safety Executive Codes of Practice and Guidance).

In considering an application, the Council will have regard to the inherent safety of the equipment, its location, storage of Liquid Petroleum Gas cylinders, maintenance, training arrangements and fire risk assessment.

The use of electric heaters will be considered subject to a risk assessment taking into account the siting of the heaters, location of electrical points, cables and protection from the weather.

The Council will consider the adequacy of the risk assessment, which must:

- identify the hazards e.g. fire, explosion, burns, impact from falling equipment / cylinders
- decide who may be harmed and how
- evaluate the risks and decide whether proposed precautions will be adequate or whether more could be done
- record findings
- review assessment and revise if necessary

7.7 Other Furniture

If planters are to be used within the pavement café, good quality composite materials may be permitted as a means of reducing their weight to maintain portability.

At least one child's high chair must be available for customers to use within the pavement café.

7.8 Barriers

Barriers or other means of enclosure are required in order to ease pedestrian movement, guide the visually impaired, protect users of the facility and contain the licenced area.

The entire pavement café (excluding entrances) **shall be enclosed in its entirety** using a suitable barrier with sufficient space for access, along with circulation inside the enclosed area. **The area should be assessed prior to application to ensure that it does not restrict access to fire hydrants on pavements by use of furniture or barriers.**

Barriers should consist of at least two solid horizontal elements; the lower element should not be more than 155 mm above the ground and the second element between 800 and 1000 mm above the ground. They must be sturdy enough to prevent collapse if accidentally walked or stumbled into.

Hoops or post and chain type barriers and low-level objects will not be acceptable

Barriers must not be permanently fixed to the ground where this is public highway.

The barriers should be supported by suitable 'feet' that do not cause a trip hazard to pedestrians, particularly those who are visually impaired.

Any barrier/planter etc must be at least 500mm from the edge of a running carriageway

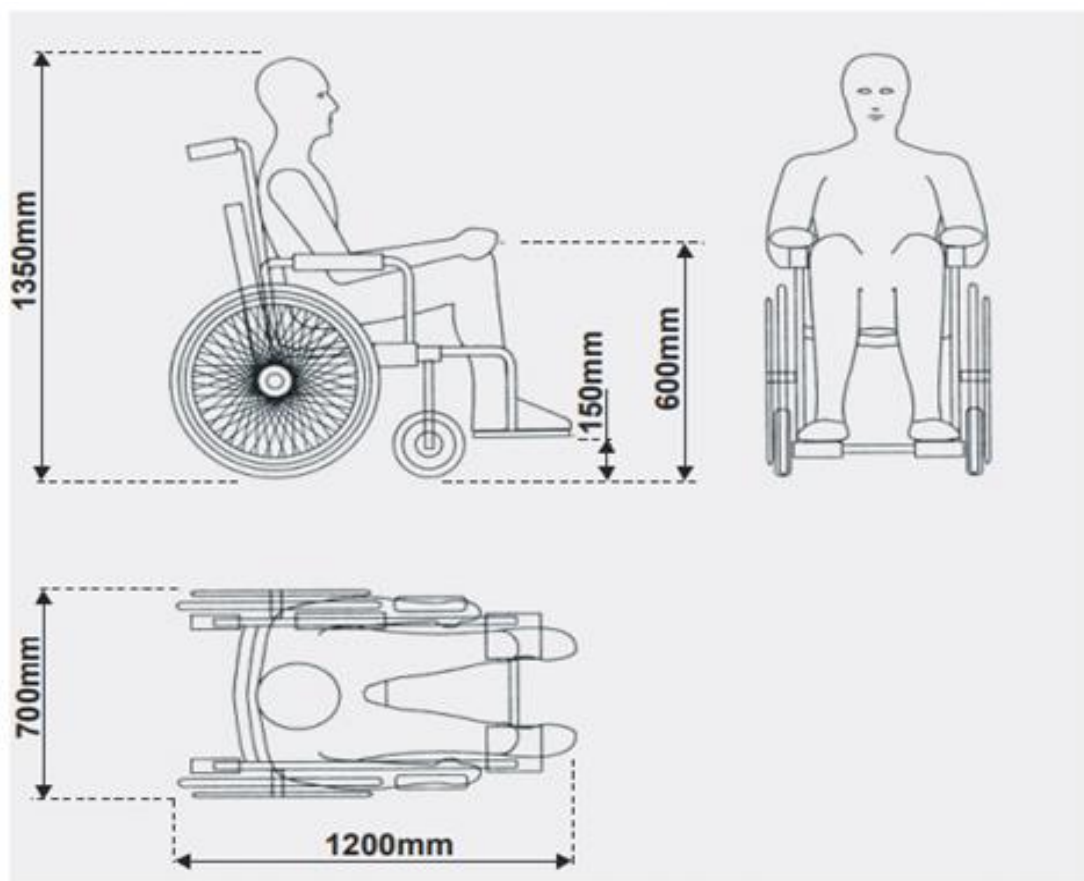
Each barrier can incorporate the café logo if desired.

A collaborative approach may be considered where a number of small pavement cafes wish to combine their space into one pavement café area provided they all consent, and this will only be subject to approval if all key agencies agree. Where granted, should problems occur because of this agreement the Council reserves the right to require barriers to delineate each pavement café.

7.9 Accessibility

All pavement cafes should be accessible for wheelchair users.

Where access to the pavement café is not level, a suitable and stable ramp, **sufficient to allow access by a reference wheelchair must be available at all times. (A reference wheelchair has: (a) total length of 1200mm including extra-long footplates (b) total width of 700mm.)**



8. ALCOHOL

In order to supply alcoholic drinks in the pavement café, a premises licence under the Licensing Act 2003 will be required. This is an entirely separate matter to granting a pavement café licence.

Drinks shall not be served to people standing outside the boundary of the pavement café, nor shall people purchasing drinks within the area be permitted to stand and drink or to take them outside of the area.

No alcohol shall be sold or consumed within the pavement café area unless in compliance with a premises licence.

A pavement café licence should not be a means of extending the overall capacity of a public house. It is expected that a pavement café will enhance facilities by offering food and/or drink in a pleasant outdoor environment. If the service of alcohol leads to anti-social behaviour or disorder, the pavement café licence may be reviewed, revoked or not renewed.

Drinking alcoholic beverages directly from bottles is not permitted in the pavement café area. Wine however, may be served from the bottle at outside tables. **Soft drinks may be allowed in bottles on the provision that they are removed and safely disposed of immediately after the contents have been consumed.** Drinks should be served in glasses made of toughened or tempered safety glass, polycarbonate, plastic or paper cups.

The café area should be supervised at all times with customers seated.

9. SMOKING

There will be a zero tolerance **no smoking** policy for all pavement cafes. A no smoking sign will be displayed at the entrance and a sign will be placed on each table.

Pavement cafes are not to be used as an outdoor smoking area and those wishing to smoke should be directed to a location away from the barriers where smoke will not drift across tables. **Where practicable, applicants will be asked to identify an area where they will direct smokers to.**

Allowing customers to vape will be at the discretion of the licence holder, however it is recommended that a vape free area is retained for those customers who do not wish to inhale the aerosol of those vaping around them.

10. FOOD/DRINK

Food businesses are required by law to be registered with the local authority. This is an entirely separate consideration to granting a pavement café licence and can be done by contacting Environmental Health.

The pavement café area is to be used only for the service and consumption of food and/or drink.

Customers must be seated at a table when consuming food and/or drink

It is imperative that good food hygiene practices are followed at all times.

All the food and drink consumed within the pavement café area should be ordered and purchased there.

The crockery and cutlery used in pavement cafes should be good quality and uniform style.

Food should be served on plates, not in plastic or cardboard containers, paper bags or other wrappers.

Tables must be cleared of all uneaten food, used crockery, cutlery etc. and properly cleaned of any spillage immediately after they are vacated by customers.

Any food spilt on the highway must be removed immediately and the area washed at the earliest opportunity. This will minimise the likelihood of birds scavenging in the area.

If birds roost on buildings or in trees adjacent to the pavement café, applicants should consider providing parasols or some other form of cover in order to minimise the risk of food contamination.

Food should never be placed in an unprotected area where a passing assistance dog could be drawn to it.

The licence holder will be responsible for the cleanliness of the pavement café area at all times. Care should also be taken to ensure that litter does not stray or get blown further afield.

Menus should be readily available either at the tables or on request. A-boards must not be used to display menus or advertise the cafe as they can cause dangerous obstructions to pedestrians.

An area of approximately 5 metres around the site should be kept clear of any stray or windblown litter from the café.

The area should be swept when necessary to keep it clear of litter and refuse. Spillages and breakages, especially of glass and crockery, should be cleared up immediately. Care must be taken to avoid nuisance to customers and to ensure that hazards are not created during this work. The café area should be cleansed at the end of the trading day or as soon as practicable.

If a bin is provided in the pavement café area it should have a lid to prevent the contents being blown by the wind and also prevent flying insects being attracted to the location. Bins should be made of non-combustible materials to reduce the risk of accidental fires or arson. Commercial wheelie bins are not suitable for this purpose.

The use of barbecues, rotisseries, ice cream machines, drinks machines or any other equipment for the preparation and/or sale of food and drink for consumption on or off the premises will not be permitted within the pavement café area without prior approval from the Council following consultation with responsible authorities.

11. NOISE / NUISANCE

Background music played at a low level may be permitted after consultation with Environmental Health provided it does not cause a nuisance to nearby residents or adjacent premises.

Television screens inside the premises will not be positioned to make them visible from the pavement café unless otherwise agreed in writing by the Council following consultation with key agencies. Where consent has been granted, the Council reserves the right to withdraw this at any time where there are concerns for public safety.

Advice on how to minimise noise disturbance can be obtained from the Council's Environmental Health team.

12. FEES

The current fees payable for the grant and renewal of pavement café licences are available from the Licensing Office and published on the Council's website.

Fees are determined by the Licensing Committee in accordance with statutory requirements and based on the size of the proposed pavement café area.

Fees are not refundable if the application is unsuccessful or where a licence is surrendered.

Variations to Fee Structure

The fee structure is reviewed annually as part of the budgetary process. Notice of the current fees will be supplied to applicants at the time of application.

13. INSURANCE

The Licence holder shall indemnify Darlington Borough Council against all liability made in consequence of the pavement cafe use, and for this purpose must take out a policy of insurance to the sum of £5,000,000. The holder must also produce to the Council, on request, current receipts for premium payments and confirmation of annual renewals of the policy. (Applicants are advised to inform their insurance company of the intention to obtain a pavement café licence, as an existing policy for the premises may not automatically cover this function.)

14. MANAGEMENT

The licence holder is responsible for the satisfactory conduct of people within the pavement café. Rowdy or unruly behaviour may lead to the suspension or termination of the licence. Premises may also wish to adopt their own dress code as a condition of entry.

15. HOURS OF OPERATION

The **maximum** permitted hours of operation will be:

Monday to Sunday between the hours of 08.00 hours and 23.00 hours

Please note that these are maximum hours that may be applied for. If there are objections to the number of hours requested, shorter times may be offered. If no compromise can be agreed, then the application will be referred to the Council Licensing Committee for consideration.

Hours may also be reduced where time limited traffic orders are in place.

Please also note that there is no drinking up period, therefore licence holders will be expected to manage the laying out and clearing of the pavement café within these hours. Posts, barriers, tables and chairs shall not be placed upon the highway before the commencement of operational hours and shall be removed entirely at the end of the operational hours.

The pavement café area shall be cleared of all waste and litter at the end of each and every licensed opening period.

6. APPLICATION REQUIREMENTS AND PROCESS

Each application for **grant and/or renewal** will be accompanied by:

- i) A completed application form; and
- ii) Risk assessments covering Health and Safety (including fire risk assessment for portable heaters) and
- iii) Action Counters Terrorism (ACT) awareness e-learning certificate; and
- iv) The prescribed fee; and
- v) A certificate of Public Liability Insurance of at least £5 million that has specific cover for the outside pavement café area. This must indemnify the Highway Authority against all claims for injury, damage or loss to users of the public highway, arising from the use of the highway for the permitted purpose, and
- vi) Details of brand, type and materials of proposed furniture; and
- vii) Details of any external lighting and heating equipment; and
- viii) Details of opening and closing times, and
- ix) Contact details for the applicant and of the property owner (if different) and
- x) A site plan to scale of 1:100 (or 1:200 if considered adequate by officers). This should show:
 - The proposed boundaries of the café giving dimensions and distance from kerb line and street furniture such as bollards etc.
 - Building line
 - Kerb line
 - Layout and dimensions of tables and seating
 - Dimensions and points of access
 - Location and dimensions of parasols and any freestanding lighting and/or heating equipment.

If the plan is not to scale and/or does not contain full details with accurate dimensions, then the application will be rejected and returned.

Applications shall be sent to

Licensing, Darlington Borough Council, Town Hall, Feethams, Darlington, DL1 5QT.

Or e-mailed licensing@darlington.gov.uk

If a licence is transferred then the new licence holder shall produce their own certificate of Public Liability Insurance of at least £5 million.

17. CONSULTATION

Grant of Licence

Where the application is for the grant of a licence, the Council will undertake a full consultation, which will include the Police, and various sections within the Council (Planning, Environmental Health, Highways, Utilities, Darlington Association on Disability (DAD), and if the pavement café is to be located in the Market place, the Markets Officer will also be consulted).

The Council will publish applications and will consult with nearby frontages that may be affected.

On the day the application is made, applicants must fix a notice of the application to the premises so that the notice is readily visible to, and can be read easily by members of the public who are not on the premises. This notice shall remain in place until the end of the consultation period of 14 days (beginning the day after the application is made). The licensing authority then have a further 14 days in which to make a determination.

An example of a notice and guidance notes for completion can be found at the end of this policy

Renewal of Licence

Where the application is to renew the licence, the Council will consult with the Police and Environmental Health only, unless there is a variation to the hours of operation and/or the size or layout of the pavement café, in which case the Council will undertake a full consultation.

Variation of Licence

Where the application is to vary the terms of the licence i.e. to increase the number of covers, or to amend the layout of the pavement café, the Council will undertake a full consultation.

Transfer of Licence

Where the application is to transfer the licence, the Council will consult with the Police and Environmental Health only.

All Applications

Applications for a pavement café licence may be submitted with an alternative layout plan that would provide a bigger café area, at certain times however, only one pavement café layout may be used at any one time. Pavement café licensed areas may not be divided by splitting the café into two discreet areas.

The applicant shall provide a written assessment of the risks their employees are exposed to whilst at work and must also assess whether there are risks to members of public that arise out of the business. This is especially in relation to the highway and also the remedies to any such risks.

NB Reviews of risk assessments shall always be carried out when there is reason to suspect that it is no longer valid or on event days where activities may affect the premises. The result of the review must be documented.

18. TERMS AND CONDITIONS

Licences will run from the date they are issued to an end date specified in the licence, which will be no more than two years after the date of issue.

The pavement café licence must be displayed in a prominent position in an external window facing the frontage.

On certain event days, the pavement café may be required to close. Should this be required a notification will be sent from the Council advising of the times and reason for the closure.

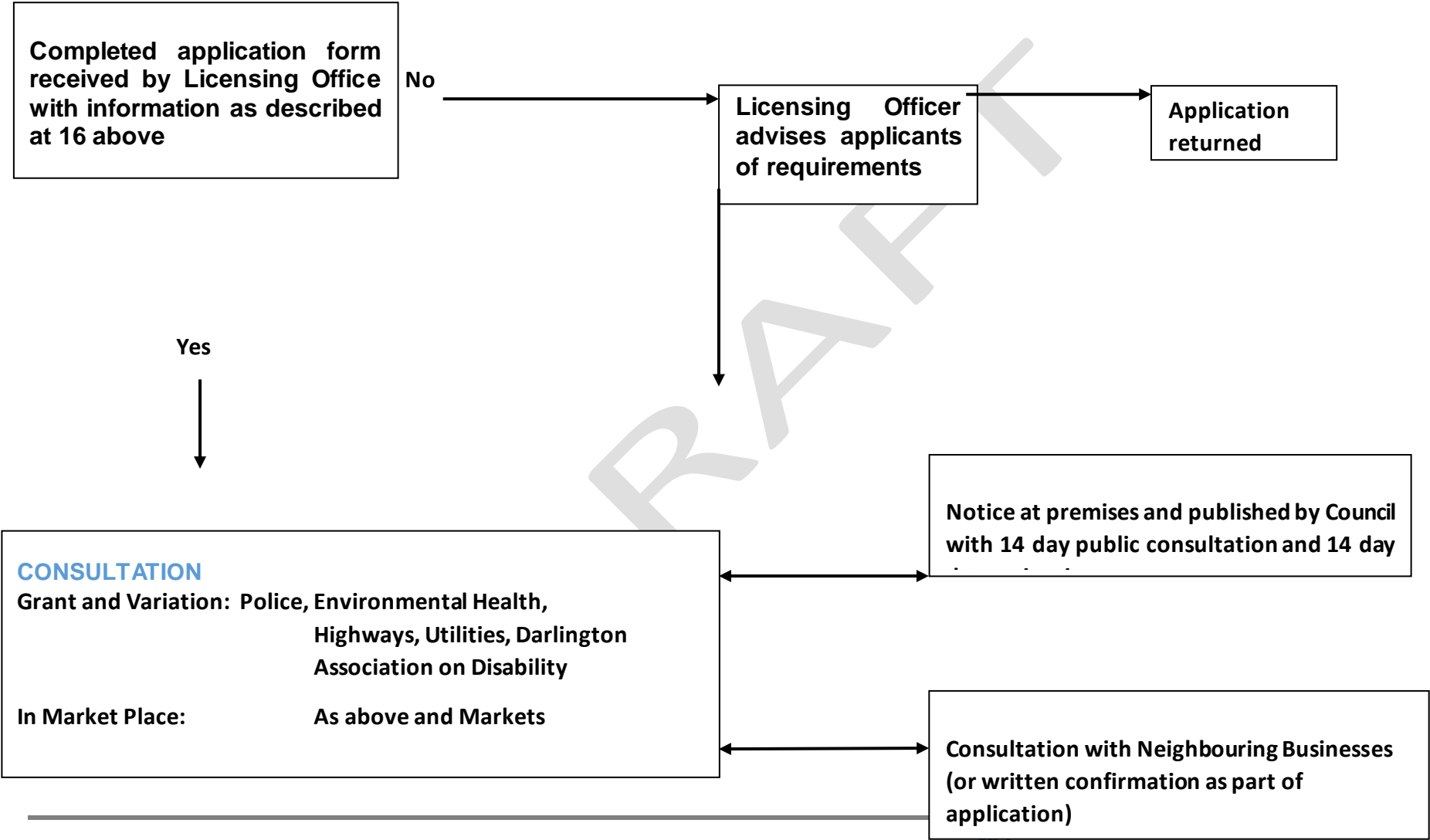
19. CONTACTS

To be added prior publication

20. SUMMARY OF PROCEDURE FOR GRANT OF PAVEMENT CAFÉ LICENCE

Complete Information

Not Complete



Objections



No Objections



**Referral to Licensing
committee for a decision**

**Licence granted with
conditions**

21. STANDARD CONDITIONS FOR PAVEMENT CAFÉ LICENCES

General

1. A copy of the licence and pavement café layout plan must be displayed at the premises at all times.
2. Smoking will not be permitted within the pavement café at any time. A “No Smoking” sign will be prominently placed at the entrance and on each table.
3. Posts, barriers tables and chairs shall not be placed upon the highway before the commencement of operational hours and shall be removed entirely at the end of the operational hours. The area shall be left clean and tidy and free of any rubbish.
4. The use of advertisement boards is prohibited
5. The advertising of gambling, irresponsible alcohol promotions or smoking products is prohibited
6. The café area must be supervised at all times whilst it is operational
7. The use of sound amplification equipment to play live or recorded music will not be allowed without approval from the Council following consultation with Environmental Health.
8. Use of television sets is prohibited
9. Television screens inside the premises will not be positioned to make them visible from the pavement café unless otherwise agreed in writing by the Council following approval from Responsible Authorities
10. The licence holder shall not cause or permit any alterations to the highway surface and any damage to the highway will be restored to the satisfaction of the Highway Authority at the expense of the licensee.
11. The licence holder shall not assign, sub-let or part with his/her interest or possession of a licence.
12. A licence holder may terminate a licence at any time by informing the Council in writing.
13. Authorised Officers of the Council and Police Officers shall have access to a pavement café at all times whilst it is operating

14. If requested by a police officer or an authorised officer of the Council by notice, all items shall be removed from the highway. These items shall remain off the highway for as long as is required.

Management

15. The licence holder shall be responsible for the conduct of people, both patrons and employees, within the pavement café area.
16. The named licence holder is required to complete the Action Counters Terrorism Awareness E-learning course <https://ct.protectuk.police.uk/> and provide proof of completion
17. Patrons shall not be permitted to remove food, drinks, crockery or any cutlery from the pavement café.
18. Only patrons seated at tables shall be served or permitted within the pavement café

Service

19. All tables must be cleared of uneaten food, used crockery, cutlery etc. and properly cleaned of any spillage immediately they are vacated by customers.
20. All the food and drink consumed within the pavement café area must be ordered and purchased there.
21. No alcohol shall be sold or consumed within the pavement café area unless it is in compliance with a premises licence.

Articles used in the Café

22. All furniture shall be of high quality, constructed of wood, metal or suitable composite and approved by the Council.
23. Parasols shall be available for use at each table if the pavement café area is in direct sunlight, and a customer requests that a parasol be provided.
24. Parasols, when opened must not overhang the boundary of the pavement café and must remain closed in periods of high winds.
25. All alcoholic drinks shall be decanted from the bottle except when a customer has ordered a particular bottle of wine, in which case, the opened bottle may remain on the

table or be decanted into a polycarbonate wine container. Staff shall ensure that all empty bottles are removed from the pavement café immediately.

26. Permitted receptacles to be used within the pavement café are:-
- Glasses made of toughened or tempered safety glass
 - Glasses made of polycarbonate or plastic
 - Paper Cups
 - Non-disposable tableware for service of food
 - Metal or non-disposable cutlery
27. At least one child's high chair must be available for customers to use within the pavement café.
28. The use of barbecues, rotisseries, ice cream machines, drinks machines or any other equipment for the preparation and/or sale of food and drink will not be permitted within the pavement café area **without prior approval from the Council following consultation with responsible authorities.**

Boundary and Barriers

29. The entire pavement café (apart from entrances) shall be enclosed in its entirety with a suitable barrier, the design and dimensions of which must be agreed, in writing, by the Council. Space will be required for circulation and access within the enclosed area in addition to that for tables and equipment.
30. All activity associated with the pavement café shall be contained within the boundary including tables, chairs and other permitted equipment.
31. The agreed boundary and layout of the pavement café as defined by the plan attached to the Licence shall not be altered without the express permission of the Council.
32. **Where express permission to use neighbouring frontages is withdrawn, pavement café furniture will be removed and new plan will be submitted for approval.**
33. Barriers must not be permanently fixed to the ground on a public highway.
34. Where access to the pavement café is not level, a suitable and stable ramp shall be provided at all times.
35. Under normal circumstances a minimum distance of 2.0 metres between the edge of the pavement café and the edge of any adjacent carriageway or vehicle route shall be maintained. If the pavement café is on a street with a high pedestrian usage this minimum may be increased to 2.75 metres. **A minimum width of 1.5 meters could be regarded as the minimum acceptable distance between two obstacles or edge of**

carriageway in certain locations with the approval of key stakeholders. A free and unobstructed passage of pedestrians on the highway must be maintained at all times.

36. Customers using the pavement café area must not obstruct the pavement outside the pavement café area with items such as push chairs, scooters etc. Staff will request the removal of these items as a condition of entry.
37. In areas where traffic is controlled by Traffic Regulation Orders and reinforced by raising/lowering bollards, if the bollard fails to rise to protect the area, the cafe licence will be suspended to protect pavement cafe users from potential unauthorised vehicle entry/vehicle strikes.

Litter

38. The licence holder 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 licence holder.

Insurance

39. If for whatever period or reason a public liability insurance policy is not in force, the Council shall be deemed to have withdrawn this Licence for the period during which the said policy is not in force and the licence holder may be held liable for obstruction of the highway and prosecution under Section 137 of the Act.

The licensing authority may impose additional conditions taking into account information disclosed by the applicant as well as any representations received during the public consultation.

EXAMPLE NOTICE FOR DISPLAY BY AN APPLICANT FOR A PAVEMENT LICENCE.

Section 2 Business and Planning Act 2020.

I/We (1),
give notice that on (2) [I/we] applied to (3) for a ‘Pavement Licence’ at: (4)

known as (5)

The application is for: (6)

Any person wishing to make representations regarding this application may do so by writing to: (7)

by: (8)

The application and information submitted is published (9).

Signed

Dated (10)

Guidance notes:

Substitute the numbers with the following information:

(1) name of applicant

(2) date the application is made (i.e. submitted)

(3) name of local authority

(4) postal address of premises

(5) name premises is known by

(6) brief description of application (e.g. outdoor seating to the front of the premises for serving of food and drink)].

(7) address to which where representations can be sent (for example council email address or via a council portal).

(8) last date for representations being the date 14 days after the date the application is submitted to the local authority (excluding public holidays)

(9) the place where the application and accompanying material can be viewed (for example council website)

(10) date the notice was first displayed (must be the same date as (2))

Appendix 2

Pavement Café Policy Consultees

- North East Strategic Licensing Group (NESLG)
- Tees Valley Licensing Group (TVLF)
- Councilors
- Ash
- Fresh
- Pubwatch
- Weatherspoons
- Stonegate Group
- Admiral Taverns
- Star Pubs
- Darlington pavement café licence holders
- Mincoffs Solicitors
- Woods and Whur Solicitors
- Poppleston Allen
- Night Time Industries Association (NTIA)
- Association of Town and City Management (ATCM)
- Purple Flag
- Public Health
- Police
- Fire Service
- Highways
- Environment
- Planning
- Darlington Association on Disability (DAD)
- Town Centre Management
- TGI Media

Appendix 3

Responses to Pavement Café Policy Consultation

<u>1</u>	<p>Hi, I am writing to express my support for the inclusion of zero tolerance to smoking/vaping in outside hospitality areas to this revised policy.</p> <p>The prevalence of cigarette smoking in the UK has decreased significantly in the last 70 years however vaping is on the increase particularly amongst young people. Reducing opportunities for smoking/vaping is a positive step in helping those who want to quit and will enhance the leisure provision in Darlington for all residents and visitors.</p> <p>According to a report from ASH in 2024 less than 12% of the UK population are now cigarette smokers. Provision of designated smoking areas, as stated in the policy, is a sufficient way to respect the rights of those who choose to smoke/vape (the minority of the population) whilst also recognising the preferences and safeguarding the health of non smokers (the majority). I do however feel a minimum distance for such purposes should be stated within the policy. Drift of secondhand smoke from cigarettes/vapes will continue to be a nuisance/health hazard if the designated smoking area is in close proximity to seating/hospitality areas.</p> <p>I applaud the council for their forward thinking on this matter. The additional measures proposed in this policy directly support the proposed amendments to the recently introduced Smoking and Vaping Bill. Implementing a zero tolerance approach to smoking and vaping is the right thing to do if we as a nation are to ever achieve the goal of a smoke free generation.</p>
<u>2</u>	<p>I wish to comment on your Pavement Policy in the light of the Coniscliffe Road development.</p> <p>Firstly, an insistence on food would make no sense and be totally at odds with the successful trial period that has been seen to work well for the bars involved.</p> <p>Smoking and Vaping; on balance I'd prefer neither but don't feel too strongly about it outside.</p> <p>Low level music is not needed in that area - conversation and laughter provides the best ambience.</p> <p>30 minute extension would give hard-pressed hospitality businesses the option to gain income without any real detrimental effect on the area.</p> <p>Finally, move the planters flush to the curb to give the bare more table space. Orb is particularly badly affected by the size of the adjacent planters.</p>
<u>3</u>	<p>I think all of the proposals are excellent!</p> <p>As a smoker myself I personally would remove myself from the seating area anyway in consideration for others- as who wants to sit among a cloud of smoke Here's hoping we get the weather!!</p>
<u>4</u>	<p>I absolutely agree with no smoking and vaping, and I agree with no need for food and a later opening. Music is good too. And some heaters please. I think m the pavement cafe culture is a really good idea and will boost the town. We will definitely come in more if we know it's dog friendly and smoke free.</p>
<u>5</u>	<p>Just like to give my views on pavement cafe policy. Definitely ban smoking and vaping. Smoking and vaping would put me off visiting a pavement cafe, I can't bear to be around it. Ambient music would be nice.</p>

<u>6</u>	Hello, having read the proposal, I think it sounds like a good idea, but disagree with the ban on smoking and vaping. I do not smoke myself, but feel that people who do so should be able to do this outside a venue. As someone who works in hospitality, I worry that venues will close if people are banned from smoking outside them.
<u>7</u>	<p>The policy on smoking and vaping would be redundant as all people would do is just step away so you would still have the fumes from smoking/vaping. Much better to try and have separate areas.</p> <p>The rest of the policy I totally agree with.</p> <p>Thank you for your time in reading this.</p>
<u>8</u>	<p>Here are my comments</p> <p>1) stop trying to ban everything- it should be up to the establishment who is serving the customers. There is no evidence smoking outdoors affects any bystanders health. Let people police themselves for goodness sake!</p> <p>2) music pumped from poor quality sound systems can be awful and sound travels. If different establishments compete it can become a cacophony- I'd recommend only allowing live music (preferably acoustic) that then limits it and boosts the local music economy</p>
<u>9</u>	<p>I would like to put forward my views for this new policy .</p> <p>As a previous license holder in Scarborough for 10 years and also a non smoker myself I can see both sides.</p> <p>I feel it would be a positive benefit to businesses to have more flexibility on the pavement policy being updated.</p> <p>As a customer I feel it would be a positive for me to be able to relax outside with just a coffee on a pleasant afternoon/evening without the need to buy food.</p> <p>I would also love to be able to have a slight background music to listen to too and as long as this is done with a respectful volume to other properties I think this adds to the ambience and ultimate experience.</p> <p>As a non smoker myself I can still also respect and understand that smoking/vaping is also a part of some people's relaxation. I would have no problem with someone on a close by table partaking in this and also as a foster carer with DBC would have no concerns sitting with my child in that same situation as it is in an outdoor space. Although he has been taught that smoking/vaping is ultimately bad for your health he also recognises that it would also be that persons choice.</p> <p>Please feel free to contact me to follow up on my views if you feel this would help.</p>
<u>10</u>	<p>Regarding the proposed changes:</p> <ul style="list-style-type: none">• No smoking and no vaping• Remove the requirement for food to be served• Allow low level background music• Raise the terminal hour from 10.30pm to 11.00pm <p>All of the proposed changes are good, except for the background music. It's completely unnecessary to impose music on customers.</p>
<u>11</u>	<p>With regards to your consultation I would like to add my views o don't want to give my details but I have worked within the night time economy for many years.</p>

	<p>You already have ludicrous enforcements, like no beer or cider bottles yet others can bring wine, champagne and soft drinks bottles outside as well as glasses.</p> <p>This basically defeats the point and causes security issues when trying to enforce this.</p> <p>You also have the policy that people must be seated again have you tried to enforce this when you have someone who has just seen their friends and are trying to talk again causes problems for security.</p> <p>Now you want to stop smoking and vaping so customers can't do this inside venues now your wanting to say they can't do it outside another crazy plan and to think someone actually gets paid to think of these things.</p> <p>May be try coming around the town during the summer and see venues and staff trying to implement these rules of sorting down or no beer/cider bottles but yet wine bottles and glasses are ok .</p> <p>If you do come out try a bank holiday the town has a terrible CCTV system that is a waste of time with the operators in charge to start off with they are of little help to the night time economy always telling staff to phone the police or asking venues what they want them to do !!</p>
<u>12</u>	<p>Dear Sirs,</p> <p>I have read the recent consultation document and wholeheartedly agree with the ban on smoking and vaping within the cafe area.</p> <p>I see the cafe area as an extension of the licensed premises and if you are unable to smoke/vape within the premises I agree that this should extend to the cafe.</p> <p>The minority of people now smoke (11%) of our population therefore the majority of those people using the cafe would prefer the ban. It is a good idea in the document to have signage identifying where those who wish to smoke/vape are signposted to the areas where this is legally allowed.</p> <p>I am very much looking forward to using these areas safely coming the summer months.</p>
<u>13</u>	<p>Apart from banning smoking and vaping, the other proposals are a step too far.</p>
<u>14</u>	<p>Great idea. Darlington Council are very forward thinking and proactive! Proud to live here.</p> <p>My thoughts.....</p> <p>Absolutely agree with the no smoking or vaping.</p> <p>Disagree with allowing low level background music, it's not necessary.</p> <p>Disagree with raising the termination timings. 10.30 is plenty.</p> <p>On the fence about food needing to be served.</p>
<u>15</u>	<p>Is this proposal for cafes and pubs?</p> <p>In my opinion, it is absolutely ridiculous to ban smoking and vaping outside. I am a non smoker, but believe people have a right to sit outside and enjoy their drink, with a relaxing smoke or vape. People work very hard to earn the right to sit down and relax. If smoking and vaping helps those people to relax, then so be it.</p> <p>I also think it may be a bad idea to stop the food policy, as if this policy is to include public houses, it's just an excuse to get drunk in the sun.</p> <p>Keep the food policy, as this will help "soak" up the alcohol intake.</p> <p>Low level volume music, could be good. What volume level is classed as low? How would the council police this? Or indeed, how would the council police any of the proposed changes?</p>

<u>16</u>	<p>I strongly object to the proposal to ban smoking and vaping at outside tables. I have never smoked or vaped but like everyone I have friends, relatives and colleagues who do.</p> <p>Encouraging people to consider giving up smoking and vaping is a legitimate public health objective.</p> <p>Trying to force adults into giving up smoking and vaping, through the imposition of coercive rules, is bullying behaviour which can not be justified in a liberal democracy.</p>
<u>17</u>	<p>Dear sirs,</p> <p>In response to your request for views on the above policy.</p> <p>I would be in favour of your proposals as I believe they would be an asset to the town and the vibrant atmosphere which could be enjoyed by locals and visitors alike.</p> <p>I particularly like your proposal to ban smoking and vaping in these areas although, as with the idea of 'low level' music, I think they would be quite difficult to enforce.</p> <p>I hope these comments are useful to you.</p>
<u>18</u>	<p>Hello,as a smoker I strongly disagree with the council banning smoking in the outdoor area. There are very few areas in pubs where we are allowed to smoke,and all the ban will do is move smokers to the area away from the seating area. It won't stop people smoking.</p>
<u>19</u>	<p>In relation to the proposed amendments to the Pavement Café Policy, I agree with all of the proposed amendments except for the ban on smoking and vaping.</p> <p>I think that a lot of the reason people choose to sit outside of a café is so that they can smoke or vape. I feel that banning smoking and vaping in the outdoor area will reduce trade. People will instead choose to sit or stand somewhere else in the town centre to smoke or vape, and not spend money doing it, therefore not supporting the local economy.</p>
<u>20</u>	<p>Thanks for putting these proposals forward,</p> <p>It would be great if the no smoking and vaping were implemented, there is nothing more off putting than a load of people taking over the out door seating area blowing all there smelly, unhealthy smoke over everyone if you ask just about any of them to stop blowing smoke over you it al.ost always ends in a very unfriendly exchange from them and spoils what should be a relaxing night/ afternoon out in the town.</p> <p>Thanks again for the proposal hope it gets passed .</p>
<u>21</u>	<p>Banning smoking and vaping is a stupid move. It's outdoors, people sit outside precisely so they can smoke / vape!</p>
<u>22</u>	<p>I refer to the Smoking section of the document. Smoking and vaping should not be banned. You are outside and it is just another way to get more businesses shutdown. People are going to have to go the other side of the barriers and then light up and the smoke will still go into the roped off area.</p> <p>What is it achieving? So people cant smoke inside, now cant smoke outside, simply they will vote with their feet and go somewhere they can. And I am a ex smoker.</p> <p>At least have the possibility of a designated smoking area were ashtrays/bins can be supplied and maybe leave it to the discretion of the owners.</p>
<u>23</u>	<p>Having read the proposed policy, I think it sounds like a good idea on all fronts, especially:</p>

	<ul style="list-style-type: none"> •No smoking and no vaping (this is a number one priority as the amount of people vaping is the current scourge of the town centre) •Remove the requirement for food to be served •Allow low level background music •Raise the terminal hour from 10.30pm to 11.00pm. <p>I think it would be helpful for a programme of jet washing to take place outside all of the pavement cafe areas in town after the winter in order to have a baseline of how well the areas are maintained by the individual businesses. The same should happen when they are packed away for autumn/winter.</p>
<u>24</u>	I would leave the smoking ban up to the owners giving them the opportunity to serve their clientele
<u>25</u>	<p>I am in total agreement with the following</p> <ul style="list-style-type: none"> •No smoking and no vaping •Remove the requirement for food to be served •Allow low level background music •Raise the terminal hour from 10.30pm to 11.00pm
<u>26</u>	<p>All great ideas. Well done.</p> <p>We normally have to sit indoors in warm weather to avoid smoke and whatever chemicals are in vapes.</p>
<u>27</u>	<p>I do not think that you should ban vaping and smoking outside or in outside seating, this has shown to have a negative affect on businesses in the past and has been shown to as part of the decline in trade for public houses.</p> <p>This also is a step towards removing rights and controlling by governments</p>
<u>28</u>	Sounds good to me
<u>29</u>	<p>I agree with the proposed pavement policy especially the no smoking or vaping. I hope however that the venues make sure that the customers adhere to the rules. I have been in public houses recently in Darlington where people have been openly vaping inside the pub and the staff have done nothing to stop them.</p> <p>The outside cafe culture is great for Darlington and I enjoy sitting outside either drinking or eating.</p> <p>As long as the council monitor the situation I am totally in favour.</p>
<u>30</u>	<p>Firstly I very much support the pavement café concept – I think it is a fantastic idea.</p> <p>My only slight issue is the inclusion of vaping products in with smoking in terms of a ban. Vaping products are promoted by the NHS as a much healthier alternative to smoking, and my personal view is that they should be allowed in an outside venue. I appreciate that vaping is lumped in with smoking tobacco products in terms of legality of use indoors (wrongly in my view) and that smokers and vapers are found together outside pubs and restaurants across the land.</p> <p>However, Vaping products have no second hand smoke element attached to them in terms of public health – midwives regard people using vapes as non smokers – and I think that we are sending out the wrong message putting those who vape in the safe</p>

	<p>bracket as tobacco users. This forces people who vape to stand in an area surrounded by people smoking the very thing they are trying to avoid.</p> <p>In my view (and I acknowledge that I am likely to be in a small minority) people who vape should not be forced to share smoking areas with those using tobacco products – and I think DBC should be sending out a positive public health message by accommodating those who vape.</p> <p>Just a thought.</p>
<u>31</u>	<p>I welcome the changes highlighted and feel they will enhance the attraction for visitors coming to Darlington.</p>

Appendix 4

Response to consultation from Fresh/Balance

Dear Colin

Many thanks for bringing this consultation to our attention. We welcome the opportunity to comment and would be very happy to discuss any element of this further.

When new pavement café rules were initially introduced as part of Covid laws, we called for these to be 100% smokefree (in terms of tobacco) as a national mandatory condition, given the lethal nature of tobacco products and shifts in social norms to create more smokefree spaces. This didn't happen nationally unfortunately, but we were delighted with the response of many North East local authorities who introduced 100% smokefree pavement cafes as a local condition.

ASH have a useful briefing on smokefree pavement licences: Smokefree Pavement Licences - ASH which sets out the legal justification, the public health justification and also the levels of public support and the economic case. It explains how smokefree pavement cafes can contribute to an environment in which smokers are helped to quit and people are protected from tobacco-related harm, as well as creating more family friendly spaces. It will be very welcome if Darlington's pavement cafes become smokefree.

In terms of vaping, nicotine vapes are very different from tobacco products. They don't contain lethal tobacco, they are proven to help people to quit tobacco smoking and to reduce tobacco-related harm. From a secondhand exposure perspective, while secondhand smoke from cigarettes causes serious harm to others, there is no evidence so far that vaping is harmful to people around you, and any risks are likely to be very low – see the NHS Better Health website pages on vaping for more information on this: Vaping myths and the facts - Better Health - NHS. What evidence there is of harm comes from prolonged exposure indoors, not outdoors.

As such, we wouldn't recommend blanket restrictions on vaping in outdoor settings without stronger evidence of harm. We would be concerned that such restrictions would imply an equivalence in harms between vaping and smoking – which isn't the case – and this will deter smokers from switching to vaping. Including vaping in smokefree pavement café rules could also make it harder to enforce restrictions on smoking because you aren't giving customers an alternative to smoking: indeed, allowing vaping outdoors may support the implementation of smokefree outdoor rules and encourage smokers to switch.

We would be happy to give you any more information that might be useful to this discussion. We would recommend being aware of the regional position statement on nicotine vaping from Directors of Public Health in the North East (here) and would encourage you to link in closely with Darlington's Director of Public Health, Lorraine Hughes, and the local tobacco control lead, Abbie Kelly, who are copied in here, particularly as the Tobacco and Vapes Bill makes its way through Parliament and the consultations that will follow in terms of extending smokefree and vape-free places.

With many thanks

Catherine

Catherine Taylor
Regulation Manager
Fresh and Balance