

GENERAL LICENSING COMMITTEE 6 APRIL 2021

INTERIM PROCEDURES FOR GRANT OF PAVEMENT CAFÉ LICENCES

Purpose of the Report

1. The purpose of this report is to invite Members to consider a proposal to simplify the application process of granting a pavement café licence when deviating from our Pavement Café Policy.

Background

2. A revised Pavement Café Policy was approved by Darlington Borough Council's Licensing Committee in March 2014 following a review. A full consultation process took place with all stakeholders and an Equality Impact Assessment was carried out by Darlington Association on Disability (DAD). A pavement café licence is bespoke to each premises but includes a number of mandatory conditions.
3. The Covid-19 pandemic highlighted a requirement for social distancing, thereby reducing capacity within premises. Given the continuing importance of the outdoors to reduce transmission of the virus, government strongly encourages local authorities to plan for outdoor dining and make all necessary changes to local high streets, squares and the public realm so this is as convenient as possible for businesses and members of the public.
4. An emergency Business and Planning Act was introduced in July 2020, which allowed for a greater use of outside space to increase capacity for premises and generate income. This Act reduced the consultation and decision making time for a pavement café licence from 28 days to 14 and placed a cap on the fee that could be charged at £100. A decision was made by the Darlington's Licensing Committee that no fee should be charged. This Act was due to cease on 30th September 2021, however this is to be extended to 30th September 2022 subject to new legislation.
5. On the 5 March 2021, Robert Jennick MP, Minister for Housing, Communities & Local Government, wrote to council leaders highlighting support for the safe re-opening of the hospitality trade and what is to be expected from local authorities (**Appendix 1**). There is an expectation that a pavement café licence will be granted unless there is a good reason not to do so.
6. The Business and Planning Act also made amendments to the Licensing Act 2003 to allow premises with outside space such as car parks, to be used for the consumption of alcohol without the requirement to apply for a new premises licence and provided those premises that had on-sale only on their licence to automatically be given off-sales. To safeguard against potential

nuisance caused by premises, an expedited review process was also introduced.

7. With the introduction of the Act there are now 32 premises with pavement café licences within Darlington. Each licence was approved by Highways, Police and Darlington Association on Disability (DAD) following consultation. These premises will have their licence automatically renewed until September 2022 provided police and highways have no representations to make.

Issue to be addressed

8. The hospitality trade and service industry is crucial to our national and local economies and it is important that these are allowed to operate safely as soon as possible. Whilst a number of premises already have pavement café licences we must be alert to other struggling businesses that may benefit from using outside space with a pavement café. It is clear from the Business and Planning Act 2020 that the government intention was to speed up the application process for pavement café licences and for local authorities to take a pragmatic approach. Our current pavement café policy has served Darlington Borough Council well for a number of years, however these unprecedented times were not considered during the last review. It would be sensible to review this policy in light of the changes experienced, however, with the hospitality trade still in a period of extreme change it would be prudent to carry this out when there is a greater understanding what the full impact Covid-19 has had on this industry.
9. When an application is received and representations are made it would ordinarily require a hearing by the Licensing Committee to decide if a licence should be granted. It may take several weeks from application to determination to complete. This delay would reduce the ability of a struggling business to take advantage of using outside space at a critical time of recovery. Once these businesses are closed it is unlikely that they will return in the future.

Proposal

10. As an interim and pragmatic approach to support local businesses on the road to recovery it is proposed that the following process be adopted when the grant of a pavement café licence will be outside of our policy:
11. Following representations, a panel comprising of the following officers will make an informed decision, after risk and equality assessments are carried out, if it will be considered safe to issue a licence subject to any conditions that may be required:
 - Head of Culture and Community Services (Chair)
 - Highways Manager
 - Licensing Manager
 - Police

12. If an application is considered to be safe with mitigating measures, the group will seek approval to grant from the Chair of the Licensing Committee, who may consult with Members before an officer delegated decision is made.
13. This will streamline the process without the requirement to convene a Licensing Committee meeting every time an application is to be considered, whilst still allowing a decision to deviate from policy to be examined by elected Members. The decision to hold a full meeting will remain for those contentious premises where opinion may be divided, however officers will continue with the practice of trying to resolve any issues by negotiation in the first instance.

Recommendation

14. Members are invited to approve a new interim decision making process to be adopted when an application for a pavement café licence falls outside our current policy

Reasons

15. The recommendation is put forward to ensure that each application is considered safe, whilst adapting to the extreme challenges presented during this pandemic

Ian Williams
Director of Economic Growth

Background Papers

Highways Act 1980
Business and Planning Act 2020
Darlington Borough Council Pavement Café Policy

Appendix 1
Letter from Minister of Housing, Communities & Local Government to Council Leaders