

GENERAL LICENSING COMMITTEE
25 JULY 2023

PAVEMENT CAFÉ LICENSING FEES

Purpose of the Report

1. The purpose of this report is to invite Members to determine the fees relating to the licensing of Pavement Cafés in light of a further extension to the current temporary pavement licensing measures, until September 2024. The fees are based on the cost recovery of administering and where appropriate enforcing the relevant legislation relating to these licences.

Background

2. Councils are responsible for administering a range of licences and for the majority of these regimes the costs are recovered through fees set by each council and paid by the licence applicant. It is an accepted principle in relation to these schemes that those who benefit from the system (licence holders) should cover the cost of it. Locally set fees are a vital means of ensuring that full costs can be recovered, reducing the risk of a subsidy from local tax payers, and that businesses do not pay more than they should.
3. Legislation permits 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). It does not permit the Council to profit from its fees and charges, thus ring fencing the income to the licensing service. Surpluses **must** be carried forward and deficits **may** be carried forward to future years within each ring-fenced licensing budget. The Council may, however, choose to subsidise the service.
4. Some fees, notably in relation to the Licensing Act 2003, are set nationally within legislation and the Council has no control. Whilst the Gambling Act 2005 allows local authorities to set fees, regulations place a maximum amount that can be charged.
5. While Full Council previously determined the levy of all fees and charges in respect of the licensing service, on 28 January 2016 it delegated the setting of fees and registrations to the General Licensing Committee.

Pavement Cafes

6. Pavement café licences are ordinarily issued under the Highways Act 1980, however the Business and Planning Act 2020 introduced a 'fast track' system of issuing licences to assist the hospitality trade recover from the impact Covid-19 had on their trade. This legislation placed a maximum fee of £100 that could be charged. Darlington's Licensing

Committee approved licences to be issued free of charge. Some of the lost income was recovered from government funds, however it is still estimated that the total loss as a result of Covid-19 was in the region of £5,000.

7. Due to the second wave of Covid-19 and a requirement to assist the hospitality trade further, this legislation was extended until September 2022.
8. It is now the intention of government to make this Act permanent (subject to some changes) through the Levelling Up and Regeneration Bill 2022. As this is still progressing through Parliament, an initial decision was taken to extend this Act until September 2023, however it was recently announced that there is likely to be a further extension until September 2024.
9. On 17 January 2023 the Licensing Committee agreed new fees that would be charged for Pavement Café licences once the extension to the Business and Planning Act ended in September 2023. This legislation will allow a maximum fee of £350.
10. As financial support for pavement café licences no longer exists, there was an expectation in that charges of up to a maximum of £350 would be made after September 2023.

Fees Proposal

11. There will inevitably be significant year on year variations in the allocated costs depending on where time has been spent. In the case of *Hemmings v Westminster*, the High Court stated that, *"a local authority does not have to adjust the licence fee every year to reflect any previous deficit or surplus, so long as it all comes out in the wash eventually"*. In this case of *R v Westminster City Council, ex parte Hutton (1985) 83 L.G.R. 461*, it was held that where the fee income generated in one year fails to meet the costs of administering the licensing system, it is open to the local authority to make a proportionate increase in the licence fee for the following year so as to recoup the cost of providing the service.
12. As funding is no longer available to subsidise the licensing service post-covid, it is proposed that a maximum fee of £100 is imposed on all Pavement Café licences issued under the Business and Planning Act until September 2024. The proposed licence fees are at **Appendix 1**.

Recommendation

Members are invited to approve a licensing fee to be introduced under the Business and Planning Act 2020.

Reasons

13. The recommendation is put forward to ensure there is a balance between recovering the costs of delivering the licensing service from the relevant licence fees whilst acknowledging

the increased cost in delivering the service from the trade. This is a proportionate response in line with current practice throughout the country.

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Background Papers

The Local Government (Miscellaneous Provisions) Act 1976

The Deregulation Act 2015

Highways Act 1980

Open for Business (LGA guidance on locally set fees)

Business and Planning Act 2020

Levelling-up and Regeneration Bill

Appendix

1. Proposed fees

Appendix 1

Pavement Café Licence fees

- Currently free until September 2023
- Proposed fee of £100 from September 2023 to 2024
- Fees already approved for charge when Levelling Up and Regeneration Act receives Royal Assent

Number of people	Current fee	Proposed fees (from Sept 2023)	Future fees (after Sept 2024)
1 - 20	£0	£100	£200
21 - 20	£0	£100	£230
41 - 60	£0	£100	£260
61 - 80	£0	£100	£290
81 - 89	£0	£100	£320
Over 100	£0	£100	£350
Duplicate fee	£0	£50	£50
Transfer licence	£0	£50	£50
Change of detail	£0	£30	£30
Variation	£0	£100	£50