

**GENERAL LICENSING COMMITTEE
17 DECEMBER 2024**

PAVEMENT CAFÉ POLICY REVIEW

Purpose of the Report

1. The purpose of this report is to invite Members to approve the draft of a revised Pavement Café Policy to be released for public consultation (**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 The licensing of pavement cafés was regulated by the Highways Act 1980, however this has recently been superseded by The Business and Planning Act 2020, which was made permanent on 31 March 2024.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: a no-obstruction condition and a smoke-free seating condition.
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 licenses to 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 was approved by Highways, Police and Darlington Association on Disability (DAD) following consultation.

Consultation Process

7. Throughout the time of Covid restrictions, 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	Representations from disability groups and this would not be in keeping with the vision for Darlington Town Centre. This is in line

<p>café area or in lieu of the café area not being utilised.</p>	<p>with Darlington’s <i>Pavements for People</i> guidance document</p>
<p>High quality furniture made from a composite material may also be considered on a case by case basis.</p>	<p>Composite materials have developed in recent years and can provide a good alternative to metal or wood</p>
<p>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.</p>	<p>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</p>
<p>In some circumstances, it may be appropriate for larger freestanding parasols or outdoor shade structure covering several tables at once to be used</p>	<p>Covid restrictions demonstrated that the use of gazebos were an effective and viable alternative to parasols in some locations</p>
<p>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.</p>	<p>There are occasions where these can be safely used and help reduce emissions</p>
<p>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.</p>	<p>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.</p>
<p>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.</p>	<p>As the town centre develops, smaller areas i.e. the Yards will not be disadvantaged and remain compliant with policy</p>
<p>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.</p>	<p>This supports families using pavement cafes, where alcohol is not the main feature</p>
<p>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. This ban is to include the use of vaping products.</p>	<p>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</p>

	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
In an initial application for a pavement café licence, applicants will be asked to identify an area where they will direct smokers to.	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.	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 from Environmental Health. Television sets are not allowed in the pavement café area	Allow a pleasant ambiance but prevents issues of excessive noise and nuisance, 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

- Following formal consultation, this policy will be returned to the Licensing Committee with any further proposed amendments for approval before a final decision is made by Full Council.

Recommendation

10. Members are invited to approve this revised Pavement Café Policy for public consultation.

Ian Williams
Chief Executive

Appendices

Appendix 1 – Draft Pavement Café Policy

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