

Licensing Committee

Wednesday, 14th December, 2016

MEETING OF LICENSING COMMITTEE

Members present: Councillor Armitage (Chairperson);
Aldermen L. Patterson, Sandford and Spence;
and Councillors Bell, Boyle, Bunting, Clarke,
Collins, Copeland, Dudgeon, Groves, Hutchinson,
Magennis, McConville, McDonough-Brown and
Milne.

In attendance: Mr. S. Hewitt, Building Control Manager;
Ms. N. Largey, Divisional Solicitor; and
Mr. H. Downey, Democratic Services Officer.

Welcome

The Chairperson welcomed Councillor Milne, who had recently replaced former Councillor Brown on the Council, to her first meeting of the Committee.

Apologies

Apologies for inability to attend were reported on behalf of the Deputy Lord Mayor (Councillor Campbell), Alderman McCoubrey and Councillor Heading.

Minutes

The minutes of the meeting of 10th November were taken as read and signed as correct. It was reported that those minutes had been adopted by the Council at its meeting on 1st December, subject to the omission of those matters in respect of which the Council had delegated its powers to the Committee.

Declarations of Interest

Councillor McConville declared an interest in respect of the application for the Grant of a Seven-day Annual Indoor Entertainments Licence for the Hawthorn Bar, 1-3 Hawthorn Street, in that she had been involved in discussions with the objectors to the application, and left the meeting whilst it was under consideration.

THE COMMITTEE DEALT WITH THE FOLLOWING ITEMS IN PURSUANCE OF THE POWERS DELEGATED TO IT UNDER STANDING ORDER 37(d)

Licences/Permits issued under Delegated Authority

The Committee noted a list of licences and permits which had been issued under the Council's Scheme of Delegation.

**Application for the Grant of a Seven-day Annual Indoor
Entertainments Licence - Hawthorn Bar, 1-3 Hawthorn Street**

The Building Control Manager informed the Committee that an application had been received for the grant of a Seven-day Annual Indoor Entertainments Licence in respect of the Hawthorn Bar, based upon the Council's standard conditions to provide music, singing, dancing or any other entertainment of a like kind.

He reported that the Building Control Service had received, outside the twenty-eight day statutory period, a petition consisting of ten signatures, objecting to the grant of the licence. He outlined the nature of the objections and pointed out that, under the terms of the Local Government (Miscellaneous Provisions) (Northern Ireland) Order 1985, the Committee, when considering an application, must have regard to any representation which had been received within the twenty-eight day statutory period. However, where an objection had been lodged outside that timeframe, as was the case with this application, it could exercise its discretion and agree to consider the objection, although it did not have a duty to do so.

During discussion, a Member highlighted the fact that the objectors had had twenty-eight days in which to submit their objections to this application and suggested that the Committee should not take them into account. He suggested also that the Committee should, in future, adopt that approach for similar applications, with a view to expediting the application process. However, the point was made that many venues across the City were located within a residential area and that the Committee had a responsibility to ensure that issues, such as those which had been highlighted in relation to the Hawthorn Bar, were addressed fully.

In response, the Building Control Manager confirmed that the objectors had been engaged in discussions with the applicant, community representatives, the Council and the Police Service of Northern Ireland, aimed at resolving issues around the operation of the premises. However, those had failed to be addressed to their satisfaction, which might explain their delay in submitting their written representation.

The Divisional Solicitor explained that, whilst the Local Government (Miscellaneous Provisions) (Northern Ireland) Order 1985 permitted the Committee to exercise its discretion and consider objections which had been received outside the twenty-eight day statutory period, it was, ultimately, a matter for it to decide whether or not to do so. However, she suggested that the Committee should bear in mind a House of Lords appeal decision which, in 2007, had upheld the Council's decision to refuse an application for a sex establishment licence, which had stated that it would be perverse if relevant information could not be taken into account, just because it had been received outside the statutory time period.

After further discussion, it was

Moved by Councillor Hutchinson,
Seconded by Councillor Magennis,

That the Committee, in its capacity as Licensing Authority, agrees not to take into consideration the representation relating to the Hawthorn Bar, on the basis that it had been received outside the twenty-eight day statutory period and, accordingly, agrees to grant a Seven-day Annual Indoor Entertainments Licence for the venue.

On a vote by show of hands four Members voted for the proposal and eleven against and it was declared lost.

Accordingly, the Committee agreed to consider the representation at a future meeting, to which the objectors and the applicant would be invited. The Committee agreed also that officers submit to a future meeting a report outlining potential options for dealing with representations which had been submitted outside the statutory timeframe.

Applications for the Grant/Renewal of Entertainments Licences with Previous Convictions

The Building Control Manager informed the Committee that, under the provisions of the Local Government Miscellaneous Provisions (Northern Ireland) Order 1985, it was required, when considering any application for the grant, renewal or transfer of an Entertainments Licence, to take into account any convictions of the applicant relating to an offence under the Order which had occurred within a five-year period immediately preceding the date on which the application had been made.

Accordingly, he drew the Members' attention to applications which had been received for the grant/renewal of Seven-Day Annual Indoor Entertainments Licences in respect of the following premises:

- **Failte Restaurant, 147 Falls Road** (grant of Entertainments Licence) – the licensee had, on 8th March, 2016, been fined £200 and ordered to pay £69 in costs, following an inspection of another premises under his control, which had revealed that a final exit had been locked shut, impeding a means of escape;
- **Ardoyne Working Men's Club, 9b Kerrera Street** (renewal of Entertainments Licence) – the applicant had, on 28th July, 2015, been convicted of providing entertainment without an Entertainments Licence, which had resulted in a fine of £200 and costs of £66 being imposed;
- **The Cuckoo, 149 Lisburn Road** (renewal of Entertainments Licence) – the licensee had, on 26th March, 2013, been fined £400 and ordered to pay £69 in costs, following an inspection of the premises, which had found that an exit door had been locked.

He informed the Members that, following those offences, officers had met with each licensee in order to review their management procedures and to ensure that

appropriate measures had been put in place to prevent a recurrence. They had discussed with them also the arrangements to be put in place for ensuring the safety of patrons, performers and staff, particularly in the event of an emergency. Subsequent inspections, which had been undertaken in relation to the current applications, had confirmed that the management procedures within each venue were now being implemented effectively. He pointed out that no written representations had been received in relation to the applications and that the Northern Ireland Fire and Rescue Service and the Police Service of Northern Ireland had offered no objections.

The Building Control Manager concluded by confirming that the Committee had, whilst considering previous applications for the renewal of the Entertainments Licences for the Ardoyne Working Men's Club and for The Cuckoo, been advised of the aforementioned convictions and that it had, on each occasion, agreed to renew the licences.

The Committee agreed, in its capacity as Licensing Authority, to grant a Seven-Day Annual Indoor Entertainments Licences in respect of Failte Restaurant, 147 Falls Road and to renew the Seven-Day Annual Indoor Entertainments Licences for the Ardoyne Working Men's Club, 9b Kerrera Street and The Cuckoo, 149 Lisburn Road.

Non-Delegated Matters

Roads (Miscellaneous Provisions) Act (Northern Ireland) 2010 – Road Closures for Special Events

The Building Control Manager submitted for the Committee's consideration the following report:

“1.0 Purpose of Report/Summary of Main Issues

1.1 To inform the Committee that the Department for Infrastructure ('the Department') has begun the legislative process which will commence, on 1st January, 2017, those parts of the Roads (Miscellaneous Provisions) Act (Northern Ireland) 2010 (the Act) relevant to the holding of special events on roads.

1.2 From that date, councils will assume responsibility for dealing with requests to hold special events on all public roads apart from special roads (which are mainly motorways) for which the Department assumes responsibility.

2.0 Recommendation

2.1 The Committee is requested to note the contents of this report and that proposals will be presented at a future meeting regarding its role in determining applications for an Order to temporarily prohibit or restrict the use of public roads in connection with special events.

2.2 A report outlining fee charging options will also be presented to you at a future meeting for your consideration.

3.0 Main Report

Key Issues

3.1 The Roads (Miscellaneous Provisions) Act (Northern Ireland) 2010 received Royal Assent on the 13th August, 2010 but has yet to be commenced.

3.2 Currently, there is no statutory basis to close roads for special events. At the moment, the PSNI close any road being used to hold an event, such as the Christmas Light Switch-on, but this has been done on the basis of their general powers for public safety and to protect the safety of road users.

3.3 The legislation will provide councils with the power to prohibit or restrict traffic using roads to facilitate special events taking place on roads.

3.4 The Act defines special events as any sporting event, social event, entertainment or the making of a film which is held on a public road.

3.5 From 1st January 2017, a person wishing to close a public road for a special event will be required to apply to the council and, after public notification and consultation with various statutory bodies including the PSNI and NIFRS and, after receiving the consent of the Department, the council will determine if a Road Closure Order is to be made.

3.6 The Department, through Transport NI, will still maintain responsibility for the closure of special roads, such as motorways and the Westlink.

3.7 Members may recall that the legislation was previously planned to commence in 2013 and at a meeting of the Licensing Committee on 20th March, 2013 it was agreed that the Council be recommended to delegate authority to the Licensing Committee to determine all applications under the Act for an Order to temporarily prohibit or restrict the use of public roads in connection with special events.

3.8 The Committee agreed also that the need for the Committee to consider all applications be reviewed one year after the commencement of the Order; and that those provisions

would come into operation upon publication of the Commencement Order by the DRD, at that time.

- 3.9 The Committee also considered a report at the same meeting regarding proposed fees and charges for the Act but agreed to defer until its next monthly meeting consideration of the report to enable further information to be obtained in relation to fees, Council costs and the advertising costs for event organisers.
- 3.10 The recommendations of the Licensing Committee were subsequently adopted by Council at its meeting on 3rd April, 2013.
- 3.11 However, in May 2013, the then Minister for Regional Development, who was responsible for introducing the Act, chose to defer commencing it until a later date.
- 3.12 The responsibility for administering the new legislation will include the following duties:
- validating and processing applications.
 - publishing a Public Notice and consulting with the relevant agencies.
 - dealing with representations from interested parties.
 - preparing Road Closure Orders and ensuring appropriate road closure and diversion signage is in place.

Concerns and Impact

- 3.13 Notification that the Act is to be commenced on 1st January, 2017 was received on 16th November, 2016. Whilst the introduction of this new power for local government is welcome, the proximity of the commencement date and the short lead in time of less than six weeks is problematic. Issues faced with the short lead in time include, for example:
- a need to review the potential financial liabilities and costs associated with this including the support currently provided by PSNI (at no cost) for policing and securing these events. It is understood that this may incur costs in the future;
 - a need to review and assess the advertisement costs of notices under the Act;

- a need to review both the Licensing Committee Standing Orders and the Scheme of Delegation to allow for the new provisions; and
- a need to review and agree appropriate and acceptable fee levels with Members for recovering costs from organisers of events.

3.14 The introduction of the new legislation will also create an additional workload for the Service. It is difficult to quantify numbers at this stage, but events such as St. Patrick's Day Celebrations, Belfast Marathon, Culture Night and Christmas Light Switch-on will require road closures as well as closures for film recordings and any special commemoration events.

Financial and Resource Implications

3.15 There will be direct financial costs attached to the administration of the new legislation and, whilst such costs may be recovered from applicants, decisions in relation to the extent of public notification required and the fee charging option chosen will determine the actual financial implication.

3.16 We have not had the opportunity to factor the role and costs of administering this legislation into our budget for the financial year of 2016-2107.

3.17 A separate report outlining fee charging options will be submitted to a future meeting of the Committee.

Equality or Good Relations Implications

3.15 The implementation of the Act will be subject to an equality impact assessment to identify any equality issues and we will work with the councils Equality and Diversity Officer to ensure all potential issues are appropriately addressed.”

After discussion, the Committee adopted the recommendation.

Licensing of Pavement Cafés – Scale of Fees

The Committee considered the following report:

“1.0 Purpose of Report/Summary of Main Issues

1.1 To consider a variety of options regarding the appropriate level of fees Belfast City Council may charge for a Pavement Café Licence.

2.0 Recommendations

2.1 The Committee is requested to consider the contents of the report and:

- 1. choose which fee charging option you consider most appropriate to introduce for a Pavement Café Licence, or**
- 2. determine appropriate fees for a Pavement Café Licence, arising from your discussions on the various options presented.**

3.0 Main Report

Key Issues

3.1 Members will recall that, at your meeting on 10th November, you considered the outcome of the public consultation on the proposed fees for a Pavement Café Licence and the period for which they should be granted.

3.2 At that meeting, the Committee agreed to defer until its next meeting consideration of the fees, to enable officers to consider in greater detail the charging structure which had been proposed by Alderman Spence and to review the costs to be incurred by the Building Control Service in administering the Pavement Café licensing process, with a view to formulating further options, which should take into account the comments which had been received during the public consultation exercise from Belfast City Centre Management (BCCM).

3.3 A copy of the minute from that meeting has been circulated.

3.4 Below is a summary of the proposed fees which you provisionally agreed at your meeting on 15th June:

	2016 / 2017
Grant Application Fee – <i>Non refundable</i>	£660
Renewal Application or Variation Fee – <i>Non refundable</i>	£435
Licence Fee (Annual)	£110

3.5 The table below is an extract from the report of 15th June, which illustrates how the average annual cost of a licence reduces the longer the period for which a licence is granted.

	Year 1	Year 2	Year 3	Year 4	Year 5	Total	Average cost
1 Year Licence	£770	£545	£545	£545	£545	£2,950	£590
3 Year Licence	£770	£110	£110	£545	£110	£1,645	£329
5 Year Licence	£770	£110	£110	£110	£110	£1,210	£242

Fee Options

- 3.5 A number of fee charging options are outlined below for consideration following your previous meeting.

OPTION 1

- 3.7 As this is a new piece of legislation, we have worked with officers from other councils to agree reasonable application processing times based on our collective experience in dealing with other types of licences administered. Every task in the process was carefully considered and an estimated time for completing that task established. These times formed the basis for costing the original fees proposed.
- 3.8 By far the largest expense identified in dealing with the pavement café licensing scheme arises from the tasks associated with the application for the grant of a new licence. We have critically re-visited these estimated times and identified some areas where processes could be streamlined in an effort to reduce costs.
- 3.9 It should be stressed however that we are still basing costs on estimated processing times and it is proposed that once we start receiving applications we will monitor time spent and officer involvement at each level of the Service so that we can base costs on actual processing times.
- 3.10 Since the original fees exercise was carried out we have created a new temporary post in the Service to help administer pavement café licensing. This post is at a lower salary grade than existing officers and will be able to deal with a reasonable proportion of the applications thus helping reduce costs.
- 3.11 In order to reduce costs further we have also re-examined the previous proposals for licence compliance checks to determine if we can reduce the annual licence fee element of the costs. This fee is charged once a licence is granted and the original annual licence fee proposed of £110 was based on 1 compliance check per premises per year, some of which we envisaged may be required to take place at the weekend.

- 3.12 If Members deem it appropriate, there is scope to reduce our level of continuing control and enforcement activity by only carrying out compliance inspections during normal working hours from Monday to Friday. Further savings can be made by only visiting a proportion of pavement cafés each year; primarily those about which complaints have been received. It is therefore proposed to only inspect 25% of the licensed premises in the first year and adjust licence costs accordingly.
- 3.13 Again, it is proposed that once we start issuing licences we will monitor time spent on enforcement and dealing with complaints so that we can base Annual Licence fee costs on actual times.
- 3.14 By undertaking these proposals the following revised fees associated with the grant of a licence have been calculated:

	2016 / 2017
Grant Application Fee – <i>Non refundable</i>	£440
Licence Fee (Annual)	£24

- 3.15 As Members were content that a Pavement Café Licence should be issued for a period of 5 years, it is proposed that the Committee does not determine a renewal fee at this stage. We will have a much more accurate understanding of the resource implications associated with administering Pavement Café Licences in 12 months' time and it is suggested that this matter be deferred until then when proposals for the fee for the renewal or variation of a Licence will be brought before you for consideration.
- 3.16 Advantages and disadvantages of option 1 fees:
- Advantages
- attains a significant reduction in the grant fee, based on an estimate of actual cost recovery;
 - the average annual cost of a 5-year licence reduces by over 50% to £112;
 - fee reflects the work associated with processing an application not the size of the pavement café; and
 - there will be a light touch approach to enforcement.

Disadvantages

- there is no concession for smaller businesses that may operate with very few tables and chairs;
- processing of applications may be slower than expected by licensees;
- some re-prioritisation of other licensing work will be required; and
- there may not be scope to deliver the regulation and monitoring of pavement cafés expected by stakeholders and pavement users.

OPTION 2

3.7 To consider the charging fee structure proposed by Alderman Spence:

- **Grant Application Fee £225.00**
(No annual licence fee in the first year)
- **Annual Licence Fee £55.00**
- **Variation / Renewal Fee £112.50**

3.8 Based on the revised grant and annual licence fee proposed in option 1, an applicant would pay £464 in the first year of their licence compared to £225 proposed by Alderman Spence, which would therefore realise a 48% level of cost recovery for administering the function.

3.19 Conversely, assuming a licence is issued for a period of 5 years then the annual renewal fee for years 2-5 proposed in option 1 would total £96, compared to £220 based on Alderman Spence's proposal.

3.20 Overall a 5 year licence, as proposed by Alderman Spence, would cost £445 compared to £560 based on option 1.

3.21 Advantages and disadvantages of option 2 fees:

Advantages

- the fees are less than proposed in the public consultation and may be more acceptable to business.
- the fees compare favourably with those charged by other councils in N. Ireland.
- there will still be a light touch approach to enforcement although more time could be

attributed to dealing with complaints due to a higher annual licence fee in years 2-5.

Disadvantages

- over 50% of the cost associated with the grant of a licence will be rate borne;
- there is no concession for smaller businesses that may operate with very few tables and chairs;
- processing of applications will be slower than expected by licensees;
- re-prioritisation of other licensing work will be required; and
- there may still not be scope to deliver the regulation and monitoring of pavement cafés expected by stakeholders and pavement users.

OPTION 3

- 3.22 The Committee requested Officers to take consideration of the views expressed by BCCM that fees should be commensurate with the status of the business and based on the quantities of tables and chairs to give businesses a degree of control over their outlay and (in general) be proportionate, relative to independent and multi-nationally owned businesses.
- 3.23 The process for dealing with an application does not change, depending upon the number of tables and chairs to be licensed; as the process is the same the costs associated with it are the same also.
- 3.24 However, reflecting on the views of BCCM and some of the comments arising from the consultation process, a suggested incremental fee structure is outlined below, based on the area used for a pavement café.
- 3.25 To determine how fees might be apportioned, reference is made to a survey of potential pavement cafés in the City we have undertaken and identified the percentage falling within various area sizes.

Size (in square metres)	% of premises within that size
Up to 2 m ²	17%
2 - 4 m ²	51%
Over 4 m ²	32%

3.26 Based on these areas it is suggested that the following fees may apply;

Size (in square metres)	Proposed grant application fee
Up to 2 m2	£0*
2 - 4 m2	£220 – <i>non-refundable</i> (50% of the fee proposed in option 1)
Over 4 m2	£440 – <i>non-refundable</i> (fee as proposed in option 1)

3.27 * Members may wish to consider that a nominal fee be charged for the smallest pavement cafés rather than no fee.

3.28 Based on the fees proposed, this will achieve an approximate 58% level of cost recovery for the Council.

3.29 However, should a large proportion of premises decide to reduce their café size to comply with the minimum area then there will be very little income and the cost for administering the scheme will be almost entirely rate borne.

3.30 It is suggested that an annual licence fee as outlined in option 1 of £24 be charged for every successful applicant for a licence under this option; assuming Members are content with the limited level of enforcement proposed to ensure costs are minimised.

Advantages

- the fees are less than proposed in the public consultation and may be more acceptable to business;
- smaller pavement cafés will benefit – Council seen to be supporting small businesses;
- the fees compare favourably with those charged by other councils in N. Ireland; and
- there will be a light touch approach to enforcement.

Disadvantages

- at least 40% of the cost associated with the grant of a licence will be rate borne;

- many businesses may choose the 'Up to 2m²' option, which will mean significantly more cost to the Council;
- potential criticism for greater fees for some businesses, likely to impact on hospitality venues;
- processing of applications will be slower than expected by licensees.
- re-prioritisation of other licensing work will be required; and
- It may not deliver the regulation and monitoring of pavement cafés as expected by stakeholders and pavement users.

OPTION 4

- 3.31 For completeness, a further option is to consider the proposed fees you provisionally agreed at your meeting of 15th June 2016:

	2016 / 2017
Grant Application Fee – <i>Non refundable</i>	£660
Renewal Application or Variation Fee – <i>Non refundable</i>	£435
Licence Fee (Annual)	£110

*Total fee year one = £770

3.32 Advantages

- a more realistic representation of the costs involved in administering the scheme;
- more likely to deliver the regulation and monitoring of pavement cafés expected by stakeholders and pavement users;
- fee reflects the work associated with processing an application not the size of the pavement Café; and
- timely processing of applications more likely to be achieved.

3.33 Disadvantages

- may have an adverse effect on the pavement café culture as responses received in the consultation were not positive;

- there is no concession for smaller businesses that may operate with very few tables and chairs; and
- the fees are higher than any of the other councils in N. Ireland.

Payment Plan

- 3.34 The Act allows councils to determine the time and manner in which fees or charges are to be paid.
- 3.35 In order to further accommodate prospective licence holders, annual licence fees may be spread over a one year period and paid in twelve equal instalments. The first payment must be received before the licence is issued but the remaining eleven instalments may be made by direct debit or eleven payments in person. This process is managed by the Council's Central Transactions Unit.
- 3.36 However, the grant application fee must, as with all our other application types, be made in full along with the application as this covers the cost of administration whether a licence is issued or not. As this forms the bulk of the cost to new applicants, it is doubtful whether there is merit in introducing a payment plan for the annual licence fee given that the maximum figure proposed in any of the options is £110.

Financial and Resource Implications

- 3.37 There are significant financial and resource implication associated with this report.

The proposed Pavement Café Licence fees at option 1 are most likely to ensure the cost of the operational and administration processes are proportionate to the licensing scheme.

Equality or Good Relations Implications

- 3.38 The Council's Equality and Diversity Officer has been consulted to ensure there are no issues with regards to the setting of fees.

After a lengthy discussion, it was

Moved by Alderman Spence,
Seconded by Councillor Boyle,

That the Committee agrees to apply the scale of charges, as set out within Option 2 of the report, with licences to cover a five-year period and to be reviewed on an annual basis and applicants to be offered the opportunity to avail, where applicable, of a payment plan to assist them in meeting the cost of licensing their business.

Amendment

Moved by Councillor McDonough-Brown,
Seconded by Councillor Armitage,

That the Committee agrees to defer until its next meeting consideration of the fees to be applied to Pavement Café Licences, to enable officers to undertake further work around Option 3 within the report, including a more detailed breakdown of the types of businesses referred to within paragraph 3.25, with a view to enabling the Council to recover the full costs of administering the Pavement Café Licence scheme.

On a vote by show of hands four Members voted for the amendment and twelve against and it was declared lost.

The original proposal standing in the name of Alderman Spence and seconded by Councillor Boyle was thereupon put to the meeting, when twelve Members voted for and five against and it was declared carried.

Licensing of Pavement Cafés - Proposed Conditions

The Committee considered the following report:

“1.0 Purpose of Report/Summary of Main Issues

1.1 This report is to enable Members to determine the standard conditions considered appropriate to attach to licences issued under the Licensing of Pavement Cafés Act (NI) 2014.

2.0 Recommendations

2.1 The Committee is requested to consider the proposed standard conditions of licence to be attached to Pavement Café Licences, as outlined in the attached appendix, and agree that:

- 1) they be adopted, or
- 2) they be adopted in accordance with any amendments deemed necessary, and
- 3) that a condition prohibiting the consumption of alcohol when using furniture on the area covered by the licence will only be attached to that licence if:
 - i. representations are received that the consumption of intoxicating liquor when using furniture on the area covered by the Pavement Café Licence would be likely to result in disorder, and
 - ii. after consideration by the Committee it is determined that the condition is attached to that specific licence, or
 - iii. if the premises specified in the licence are premises licensed under the Licensing Order of a kind mentioned in Article 5(1)(b) of that Order (i.e. off-licences).

2.2 As these decisions are not a delegated function of the Licensing Committee, any decision will be subject to ratification by Council.

3.0 Main Report

Key Issues

3.1 The Licensing of Pavement Cafés Act (NI) 2014 ('the Act') came into operation on 1st October, 2016.

3.2 The legislation makes provision for the regulation by district councils of the placing in public areas of furniture for use for the consumption of food or drink.

3.3 DSD, now the Department for Communities, when introducing the Act, stated that its aim was to create 'light touch' legislation aimed at encouraging the creation of a café culture.

General Conditions of a Licence

3.4 The Act requires that a Pavement Café Licence must include a condition requiring temporary furniture not to be placed on any public area other than the area covered by the licence.

- 3.5 The Act also permits that a council may specify in a Pavement Café Licence such other conditions as it considers reasonable, and these may in particular include conditions –
- i. limiting the furniture which may be placed on the area covered by the licence by reference to the kind, amount, size or nature of the furniture;
 - ii. limiting the days or times when the furniture may be on that area;
 - iii. for ensuring that adequate arrangements are made for storing the furniture when not on that area;
 - iv. regulating the arrangements for payment to the council of fees;
 - v. for ensuring that such insurances and indemnities as may be specified in the licence are put in place;
 - vi. requiring the council to be notified of such matters as may be specified in the licence;
 - vii. requiring the surrender of any other pavement café licence in respect of the premises.
- 3.6 Members are asked to consider the proposed standard conditions set out in the attached appendix and determine if you wish to adopt these as the standard conditions of licence which will be attached to Pavement Café Licences in Belfast, under the Licensing of Pavement Cafés Act (NI) 2014.

Conditions Regarding the Consumption of Alcohol in a Pavement Cafe

- 3.7 If the Council grants a Pavement Café Licence, then the bye-laws prohibiting the consumption of alcohol do not apply to the area which is licensed. The Council may, however, include a condition prohibiting the consumption of alcohol at a pavement café, if it is satisfied that permitting persons to consume intoxicating liquor in the area covered by the Pavement Café Licence would be likely to result in disorder. If the Pavement Café Licence is one which has been granted to off-sales premises, the Council must impose a condition prohibiting persons from consuming intoxicating liquor in the area covered by the licence.
- 3.8 If Members decide that there should be a standard condition prohibiting the consumption of alcohol on all licences, then all bars, hotels and restaurants which apply for a Pavement Café Licence will have to come before Committee to seek the removal of the condition (assuming they wish to serve alcohol in their pavement café).

- 3.9 In order to keep the impact of the Act on licensees to a minimum, to process applications in a timely fashion and to reduce the administrative burden (and hence costs) on the Council, Members may wish to determine that a condition prohibiting the consumption of alcohol does not become a standard licence condition and will only be attached to a licence if:
- i. representations are received that the consumption of intoxicating liquor when using furniture on the area covered by the Pavement Café Licence would be likely to result in disorder, and
 - ii. after consideration by Committee it is determined that the condition is attached to that specific licence, or
 - iii. if the premises specified in the licence are premises licensed under the Licensing Order of a kind mentioned in Article 5(1)(b) of that Order (off-licences).
- 3.10 Members are advised that the conditions of licence may be reviewed and amended if necessary once the regime has been in operation for a period of time and nothing prevents the Committee from attaching any other condition it considers reasonable to any particular application that may come before it.
- 3.11 Any decision of the Committee in relation to policy and legislation concerning licensing matters must be ratified by Council.

Financial and Resource Implications

- 3.12 There will be additional Officer resource implications in implementing the Act and these costs will increase the greater the number of reports relating to Pavement Café applications that must be brought to Committee.

Equality or Good Relations Implications

None associated with this report.

Appendix

Proposed Standard Conditions to be attached to Licences issued under the
Licensing of Pavement Cafés Act (Northern Ireland) 2014

DEFINITIONS:

Furniture	Includes tables, chairs, umbrellas, barriers, heaters, menu boards or other approved fittings
Licensed area	A public area as defined on a plan approved by the Council as a pavement café.
Licensed period	The days and hours approved by Council when the licensed area can be used as a pavement café.
Licensee	Shall include their nominee in their absence
Licensing Order	The Licensing (Northern Ireland) Order 1996
Pavement Café Licence	The permission given by Council to allow the placing of temporary furniture on a specified public area for customers to consume food or drink supplied from the licence holder's premises

CONDITIONS OF A LICENCE

1. The Licensee shall be responsible at all times for compliance with the terms and conditions of the Pavement Café Licence.
2. The licensed area must only be used to place temporary furniture for the purpose of consuming food and/or drink supplied from the licence holder's premises.
3. The Licensee shall at all times ensure that the pavement café furniture is not placed outside the licensed area.
4. Only furniture permitted by the Council shall be used in the licensed area and such furniture shall be placed in accordance with the layout plan as agreed in writing by the Council.
5. The licensee shall only place furniture on the licensed area on those days and during those hours as permitted by the licence.
6. Any furniture provided in the licensed area shall not mark or damage the surface of the pavement.
7. Furniture should be sufficiently portable that it can be removed within 20 minutes.
8. Adequate storage approved in writing by the Council must be provided to ensure that furniture can be stored securely when the premises are closed.

9. The Licensee shall ensure that adequate Public Liability insurance cover is in force to cover the licensed area and provide proof of that insurance upon demand by the Council.
10. The licensee shall ensure good order is maintained during all times the Pavement Café is open.
11. The licensee shall ensure that the pavement café is operated in a manner ensuring that there is no safety risk, nuisance, public health issue or detriment to amenity caused to other users of the highway or nearby premises.
12. This licence does not in any way permit the playing of live or recorded music for the entertainment of customers in the licensed area.
13. The licensee must have in place a commercial waste collection contract and provide proof of that contract upon demand by the Council.”

After discussion, the Committee agreed that the standard conditions, as set out within the foregoing appendix, be attached to a Pavement Café Licence and agreed also that a condition prohibiting the consumption of alcohol should be attached only in those circumstances outlined within paragraph 2.1 of the report.

Licensing of Pavement Cafés - Role of the Licensing Committee

The Building Control Manager submitted for the Committee’s consideration the following report:

“1.0 Purpose of Report/Summary of Main Issues

- 1.1 The purpose of this report is to consider the scope of the Licensing Committee in the decision making process relating to the licensing of Pavement Cafés and to consider proposed amendments to the Scheme of Delegation.

2.0 Recommendations

- 2.1 As these decisions are not a delegated function of the Licensing Committee, the Committee is requested to agree that:

1. the Licensing Committee assumes responsibility for determining all matters under the Licensing of Pavement Cafés Act (NI) 2014, with the exception of those which have been delegated to the Director of Planning and Place;

2. the Scheme of Delegation be amended, as outlined in paragraph 3.20; and
3. that feedback from Members will be incorporated into a subsequent report to the Strategic Policy and Resources Committee on the amendments proposed.

2.2 Any decision of Committee in relation to amendments to Standing Orders or the Scheme of Delegation will be subject to ratification by the Council.

3.0 Main Report

Key Issues

3.1 Members are reminded that the Department for Social Development, after they carried out an appraisal of the impact of pavement cafés in Northern Ireland, concluded that a common, clear and transparent legislative framework would be required in order to enable a café culture to develop and hence the Licensing of Pavement Cafés Act (NI) 2014 ('the Act') came into operation on the 1st October 2016.

3.2 A copy of the Act has been circulated to the Committee.

3.3 The legislation makes provision for the regulation by district councils of the placing in public areas of furniture for use for the consumption of food or drink.

3.4 The Service is mindful of the businesses that are currently placing tables and chairs on the pavement in the City and are very keen to develop a fair and reasonable approach to the enforcement and administration of the legislation within Belfast.

3.5 The DSD, now the Department for Communities, when introducing the Act stated that its aim was to create 'light touch' legislation aimed at encouraging the creation of a Café culture.

3.6 The Role of Committee in the Decision-Making Process

Due to the regulatory nature of the legislation and that there will be applications submitted under it which may be subject to challenge and public representations, the Council needs to ensure that the necessary governance arrangements, processes and policies are put in place to administer this function and to minimise the potential risks to the Council.

- 3.7 As Members are aware the Licensing Committee has delegated authority for determining applications in relation to a variety of matters, such as Entertainments Licences, where objections have been received. In addition the Committee is also responsible for determining such other matters of a licensing nature as the Director of Planning and Place, in consultation with the Town Solicitor, deems appropriate.
- 3.8 Given the licensing/regulatory nature of the Act and the similarities with the role of the Licensing Committee in terms of process, it is recommended that the Licensing Committee assumes responsibility for determining those applications for a pavement café where representations have been received either as a result of the public notice of an application or as a result of consultation with the Department for Infrastructure, PSNI, or such other persons the council considers appropriate.
- 3.9 Advice from Legal Services is that Standing Orders will be amended to include reference to the pavement café legislation and to confirm those aspects of the Act for which the Licensing Committee shall have delegated authority in determining.

Scheme of Delegation

1. Applications where no adverse representations are received

- 3.10 To deal with applications as expediently as possible, it is recommended that the Council's Scheme of Delegation be amended in line with the delegated powers for other licensing matters which will enable the Director of Planning and Place to issue Pavement Café Licences, except in circumstances where adverse representations are received.

2. Revocation, Suspension or Compulsory Variation of a Licence

- 3.11 The Council has powers under the Act to revoke, suspend or make a compulsory variation of a licence in a variety of circumstances.
- 3.12 For example, a council may at any time revoke a licence if it is satisfied that the licence holder has persistently failed to comply with any condition of licence or may suspend a licence if satisfied that all or part of the public area where the licence permits the placing of temporary furniture has become, or is going to become, temporarily unsuitable for that purpose.

- 3.13 The council may also make a compulsory variation of a licence, for example, to limit the days or times when furniture may be placed on the licensed area.
- 3.14 If it considers that there are particular circumstances which make it necessary to do so in the public interest, a council may decide to revoke, suspend or make a compulsory variation of a licence without first notifying the licence holder of its proposal so to do.
- 3.15 There will be circumstances such as the carrying out of road works, utility works or construction work at an adjacent building which will require the temporary suspension of a licence. There will be other circumstances including events which attract large crowds, e.g. Christmas Lights Switch On, where it would be prudent in the interests of public safety to suspend a licence. These may not always come to our attention in sufficient time that we might bring them before Committee in order that it may determine if the licence should be suspended.
- 3.16 It is not envisaged that there would be circumstances where a similar need would arise in relation to the revocation or compulsory variation of a licence.
- 3.17 Members may therefore wish to consider making provision under the Scheme of Delegation that the Director of Planning and Place has, in conjunction with the Town Solicitor, authority to suspend a licence where it is in the public interest to do so.
- 3.18 A decision to suspend a licence will in no way affect an individual's right of appeal against that decision.
- 3.19 In order to deal with the majority of Pavement Café Licence applications in a timely fashion and with the aim of keeping administrative costs to a minimum it is therefore suggested that the following amendment is made to the Scheme of Delegation to cater for the introduction of pavement café licensing:
- 3.20 Under the Scheme of Delegation the Director of Planning and Place is responsible for exercising all powers in relation to the issue, but not refusal, of Pavement Café Licences, excluding provisions relating to:
- applications for the grant, renewal or variation of licences where adverse representations are received.

- compulsory variation of licences.
- revocation of licences.
- setting of licence fees.
- suspension of licences except where in the public interest the Director, in consultation with the Town Solicitor, considers that there are particular circumstances which make it necessary to suspend a licence immediately.

3.21 Members are advised that the ultimate responsibility for the Licensing of Pavement Cafés Act will remain with the Committee.

3.22 Any decision of the Committee in relation to policy and legislation concerning licensing matters must be ratified by Council.

Financial and Resource Implications

3.23 There will be additional Officer resource implications in implementing the Act and these costs will increase the greater the number of reports relating to pavement café applications that must be brought to Committee.

Equality or Good Relations Implications

3.34 There are no equality or good relations implications associated with this report.”

After discussion, the Committee adopted the recommendations.

Chairperson