



<b>Subject:</b>	<b>Licensing of Pavement Cafés</b>
<b>Date:</b>	21st September 2022
<b>Reporting Officer:</b>	Stephen Hewitt, Building Control Manager, Ext 2435
<b>Contact Officer:</b>	James Cunningham, Senior Licensing Officer, Ext 3375

<b>Restricted Reports</b>	
<b>Is this report restricted?</b>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
<b>If Yes, when will the report become unrestricted?</b>	
<b>After Committee Decision</b>	<input type="checkbox"/>
<b>After Council Decision</b>	<input type="checkbox"/>
<b>Sometime in the future</b>	<input type="checkbox"/>
<b>Never</b>	<input type="checkbox"/>

<b>Call-in</b>	
<b>Is the decision eligible for Call-in?</b>	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>

<b>1.0</b>	<b>Purpose of Report/Summary of Main Issues</b>
1.1	The Licensing of Pavement Cafes Act (NI) 2014 (“the Act”) came into operation on 1st October 2016. However, the Council, along with a number of other councils, did not implement the legislation at that time, as the Department for Infrastructure Roads had not issued its technical guidance for Councils in support of the Act.
1.2	The Committee is reminded that, in 2017, it previously determined a number of matters in relation to the administration of the Licensing of Pavement Cafés Act (NI) 2014.
1.3	This included setting Pavement Café Licence fees, agreeing the Standard Conditions to be attached to licences, agreeing the standard hours of operation for licences and amendments to the Scheme of Delegation to outline those matters that would be brought before the Licensing Committee for consideration.

1.4	The Council in June 2020, decided to introduce a temporary process for considering pavement café applications to assist the hospitality sector during the pandemic, as we had not implemented the legislation due to the lack of technical guidance. The temporary pavement café licensing scheme was extended last year and will expire on 30th September 2022.
1.5	This report is presented to seek guidance on how to progress from the temporary process for pavement café licences to a permanent scheme.

<b>2.0</b>	<b>Recommendations</b>
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2.1	<p>Based on the information provided Members are asked to consider proposals that:</p> <ol style="list-style-type: none"> <li>1. A permanent pavement café licensing scheme should now be implemented.</li> <li>2. A transition and implementation period of six months be introduced to allow existing licensed businesses to continue to operate until the grant of their permanent licence is determined and after which temporary licences will no longer be valid.</li> <li>3. The application fees, as agreed by the Council in 2017, be introduced.</li> <li>4. There will be a review of current Licence Conditions.</li> <li>5. There will be a gradual return to normal and proportionate enforcement procedures.</li> </ol>
2.2	Members are advised that the Licensing Committee does not have delegated powers in relation to policy decisions concerning licensing matters and, as such, your recommendation will be subject to ratification by the Council.

<b>3.0</b>	<b>Background</b>
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3.1	The Licensing of Pavement Cafes Act (NI) 2014 (“the Act”) came into operation on 1st October 2016. However, the Council, along with a number of other councils, did not implement the legislation at that time as the Department for Infrastructure Roads had not, and still has not, issued their technical guidance for Councils in support of the Act.
3.2	That said, the Department for Infrastructure (DfI) has now evaluated and determined the appropriateness of 85 Temporary Pavement Café applications in Belfast, using their professional expertise following their own guidance documents.
3.3	As such, DfI’s technical guidance document for Council’s is no longer seen as crucial, as DfI is deemed to be the experts in determining the suitability for the use of the pavement.
3.4	The Council, in June 2020, decided to introduce a temporary process for considering pavement café applications to assist the hospitality sector during the pandemic, as we had not implemented the legislation due to the lack of technical guidance. The temporary pavement café licensing scheme was extended last year to 30 September 2022.
3.5	This process included drafting temporary guidance for applicants, which was based on the Department for Communities guidelines and supplementary guidance from the Licensing Forum Northern Ireland produced when the Act came into force.
3.6	The Council’s temporary guidance was issued to assist the hospitality sector during the pandemic. The principles contained in that guide will transfer into permanent guidance.

<p>3.7</p> <p>3.8</p> <p>3.9</p> <p>3.10</p>	<p>One of the key aspects of the temporary process was the ability of businesses to start using the pavement café area whilst their licence application was being determined and statutory agencies were encouraged, by Government, to take a very liberal view when considering applications to allow the hospitality businesses to reopen. This meant permitting:</p> <ul style="list-style-type: none"> <li>• Much larger pavement café areas, than would have been agreed in ‘normal’ circumstances.</li> <li>• Dfl introducing ‘Parklets’ to be used as a pavement café area.</li> <li>• Dfl closing or restricting roads so they could be used as a pavement café area</li> </ul> <p><b>Current Situation</b></p> <p>There are now 85 Pavement Cafés in Belfast that have received temporary licences. The majority of these are well run, with no complaints to the Council. More than 40 other applications have been received which could not progress due to applicants failing to provide sufficient information to consult with Dfl Roads. There are also a significant number of businesses operating who have not applied for a Temporary Pavement Café licence.</p> <p>A few licensed pavement cafés, in particular in the City centre, are now becoming a source of complaint from adjacent businesses and from members of the public. The nature of those complaints relates to:</p> <ul style="list-style-type: none"> <li>• The size of the area being used.</li> <li>• The area affecting footfall and trade to adjacent businesses.</li> <li>• Furniture not being removed at the end of trade.</li> <li>• Impact on early morning deliveries.</li> </ul> <p>We also have reports that the Council’s cleansing and waste management crews are experiencing difficulties in getting their vehicles in to empty bins and clean the streets as pavement café furniture is not being removed at the end of trade. Additionally, the pavement is not being cleaned and litter generated by customers using the area is not being collected by the business. This is contributing to the ongoing cleanliness issues in the City.</p>
<p><b>4.0</b></p>	<p><b>Key Issues</b></p>
<p>4.1</p> <p>4.2</p> <p>4.3</p> <p>4.4</p> <p>4.5</p>	<p>There is an obvious desire to create a vibrant café culture in the City, with al fresco dining now an accepted part of the hospitality offer. In doing so, we must also be mindful of the impact this may have on the various needs of all those who use our City.</p> <p>Temporary licences will expire at the end of September and several licensees have been enquiring about ‘renewing’ their licence.</p> <p>It is therefore, proposed, that a permanent pavement café licensing scheme should now be implemented given that Dfl has already evaluated the technical appropriateness of many temporary Pavement Café applications.</p> <p>As previously determined by the Council in 2017, Pavement Café licences will be granted for a period of 5 years.</p> <p>To implement pavement café licensing, it would be advisable to have a transition and implementation period of approximately six months. It is suggested that all grant applications from existing licensed pavement cafés should be made by the end of December 2022 at the</p>

latest. The implementation period will allow existing licensed businesses to continue to operate until the grant of their permanent licence is determined.

4.6 The implementation period will also allow the Council time to process grant applications for permanent applications and for relevant statutory and public consultations to be undertaken. An implementation period will also avoid the prospect of an influx of grant applications having to be considered in a short space of time.

4.7 A cut-off date for transitional arrangements to enable a move to a permanent Pavement Café Licence scheme is suggested as 31 March 2023. Thereafter any temporary licences will no longer be valid and any that have not made an application for a Licence will be subject to routine enforcement procedures.

#### **Fees**

4.8 Given the circumstances under which the temporary scheme was introduced, the Council waived any fees associated with a Pavement Café application.

4.9 In 2017, the Council agreed that fees should be charged for a Pavement Café Licence and determined the grant application fee to be £225.00, with an annual licence fee of £55.00 for the ensuing 4 years. (No annual licence fee is charged in the first year).

4.10 Whilst the legislation allows the Council to set fees at full cost recovery levels, Members decided to set a significantly reduced fee, equating to 25 pence per day for a 5-year licence.

4.11 It is, therefore, proposed that, in implementing the Pavement Café scheme, we also introduce the associated fees agreed by Council in 2017. In doing so, this would be similar in approach to several other councils.

4.12 The financial implications of not introducing fees for 5-year pavement café licences will be lost income of at least £37,825, based solely on the current number of applications granted at present.

#### **Licence Conditions**

4.13 The Licensing Committee agreed, at its meeting in December 2016, to Standard Licence Conditions which would be applied to pavement café's.

4.14 The majority of those conditions have proven appropriate, however, there is scope to clarify and augment some of those Conditions, particularly in relation to street cleanliness issues.

4.15 Should it be agreed that the permanent scheme be implemented, a further report will be brought to the Committee in the coming months to consider revised conditions.

#### **Enforcement**

4.16 Over the course of the pandemic, the Council has responded to requests from the Assembly and industry to assist recovery and we have, therefore, been endeavouring to provide support and minimise impact on small businesses.

4.17 For that reason, there has been a very 'light touch' approach to enforcement in relation to those who have not made application, failed to provide the necessary information to progress their application or who may not be operating in accordance with the terms of their licence.

4.18	As restrictions have ceased, there needs to be a gradual return to normal and proportionate enforcement procedures in line with established council policy guidance. This will include addressing applications which cannot progress because insufficient information has not been provided, commencing proactive action in relation to unlicensed pavement cafes and dealing with breaches of Licence Conditions.
<b>5.0</b>	<b>Financial and Resource Implications</b>
5.1	The grant application fee for a 5-year pavement café licence is £225.00, with an annual licence fee of £55.00 for the subsequent 4 years. If the fees are waived there will be a total lost income over 5 years of at least £37,825 on the basis of applications granted at present.
<b>6.0</b>	<b>Equality or Good Relations Implications/Rural Needs Assessment</b>
6.1	Full engagement with the Equality and Diversity Officer regarding the equality screening exercise undertaken in June 2020 and reviewed in 2021 will be undertaken prior to progressing to a permanent scheme.
<b>7.0</b>	<b>Documents Attached</b>
	None