



Subject:	Licence Fees for Pavement Cafés
Date:	15th June, 2016
Reporting Officer:	Stephen Hewitt, Building Control Manager, Ext 2435
Contact Officer:	Patrick Cunningham, Assistant Building Control Manager, Ext 6446

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

1.0	Purpose of Report/Summary of main Issues
1.1	Section 12 of the Licencing of Pavement Cafés Act (NI) 2014 gives the Council the power to set sufficient fees to allow it to recover the full costs of administering the Pavement Cafe Licence Scheme. However, the Council has the discretion to charge a reduced fee or to waive all charges.
1.2	Any reduced fee will result in a short fall in income to cover the cost of administering the scheme which will need to be recovered by another means.
1.3	The Act, prescribes the range of circumstances in which the Council may charge a fee: <ol style="list-style-type: none">1. for the grant or renewal of a Pavement Cafe Licence; and2. for varying the conditions on a Licence at the request of the licence holder.
1.4	The Act also limits the maximum amount of the fee to that required to cover the Council's costs in administering the scheme. The Council is, therefore, prohibited from using the Licensing system to raise revenue.
1.5	The EU Services Directive, the Provision of Services Regulation 2009 and the Hemming case have provided clarity about the specific requirements that apply to the charging of fees. Charges must be reasonable and proportionate to the cost of the processes associated with a licensing scheme and councils must not use fees to make a profit or act as an economic deterrent to certain business types from operating within an area.

	<p><u>Hemming v Westminster Case</u></p> <p>1.6 Members may be aware of the recent case involving Hemming v Westminster City Council. The case was determined on 29th April 2015 in the Supreme Court who delivered judgment, in what was a significant case for regulators and the regulation of licensing or other similar regulatory regimes.</p> <p>1.7 The Supreme Court held that local authorities can charge for the cost of “enforcement of licence” as well as the cost of “processing the licensing application.” The Supreme Court referred the question to the Court of Justice in Luxemburg of whether the total fee, including management costs, could be demanded upfront on the basis that the management fee is refunded to unsuccessful applicants.</p> <p>1.8 Section 5 of the Act allows the Council to determine the period of the Licence, for example the Council could determine 1 year, 3 year, 5 year licence and so on. The period of the licence will impact on the overall cost to the licensee. A 5 year licence would also be compatible with proposed changes to entertainment licensing and with liquor licensing.</p> <p><u>Procedure for Fee Setting</u></p> <p>1.9 The Act states the procedures which the Council must follow in setting the fees and these stages may be summarised as follows:</p> <ol style="list-style-type: none"> 1. The Council is to give notice of the proposed fees to licence holders and to publish the proposed fees by such means as it thinks appropriate. 2. The Council is required to consider any written representations concerning the proposed fees and charges. <p>1.10 However, as a prerequisite, Members need to determine the proposed level of fee, which will allow the Council to start the statutory process for setting the fee as per stage one above.</p> <p>1.11 As there are no licence holders presently, we propose this year that the Council publishes the proposed fees in the same manner as the Street Trading Fees, in two or more newspapers showing how the fees have been calculated. This should ensure that as many prospective applicants are aware of the proposed fees. This cost will be borne by the Service.</p> <p>1.12 As we progress, further reports will be brought before the Committee detailing the outcome of the process of consultation. At that stage, Members will be able to determine the final fee you consider appropriate.</p>
2.0	Recommendations
2.1	<p>Members are asked to:</p> <ol style="list-style-type: none"> i. determine the proposed level of fee; ii. agree the period of a Pavement café licence; and iii. authorise the proposed fees for publication and commence consultation.
2.2	<p>Members are asked to note that,if full cost recovery is not achieved, then this will have a direct impact on the district rate and would need to be referred to the Strategic Policy and Resources Committee.</p>

2.3	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 as to the appropriate fees for Pavement Cafe Licences will be subject to ratification by Council.																																												
3.0	Main report																																												
	<p data-bbox="236 414 391 448"><u>Key Issues</u></p> <p data-bbox="140 481 1436 582">3.1 The licensing of Pavement Cafés is a new Council function, as such fees have never previously been determined. However, the Council has extensive experience in processing and granting similar types of licence, such as a Street Trading Licence.</p> <p data-bbox="140 616 1436 716">3.2 Information gained from dealing with these and other licence applications has been used to develop an up to date understanding of the costs associated with Pavement Café Licensing.</p> <p data-bbox="140 750 1436 884">3.3 An analysis of the time allocated to each task in the licensing process was undertaken and costing estimates developed based on administration and compliance costs arising from salaries, employer’s National Insurance contributions, superannuation contributions, office rental costs and other on-costs.</p> <p data-bbox="140 918 1436 985">3.4 The detailed costs of the revised licence fees are attached. Below is a summary of the proposed fees:</p> <table border="1" data-bbox="255 1019 1412 1198"> <tr> <td></td> <td>2016/2017</td> <td>Say</td> </tr> <tr> <td>Grant Application Fee - <i>Non refundable</i></td> <td>£661.00</td> <td>£660</td> </tr> <tr> <td>Renewal Application or Variation Fee - <i>Non refundable</i></td> <td>£433.50</td> <td>£435</td> </tr> <tr> <td>Licensed Fee (yearly)</td> <td>£110.00</td> <td>£110</td> </tr> </table> <p data-bbox="140 1220 1436 1321">3.5 As previously mentioned in the report and to assist Members in deciding the period of the licence, the actual costs over the time period are set out below. For ease of comparison, we have based it on a 5 year period and worked out the average cost per year for that licence:</p> <table border="1" data-bbox="247 1355 1420 1512"> <thead> <tr> <th></th> <th>Year 1</th> <th>Year 2</th> <th>Year 3</th> <th>Year 4</th> <th>Year 5</th> <th>Total</th> <th>Ave cost</th> </tr> </thead> <tbody> <tr> <td>1 Year Lic</td> <td>£770</td> <td>£545</td> <td>£545</td> <td>£545</td> <td>£545</td> <td>£2,950</td> <td>£590</td> </tr> <tr> <td>3 Year Lic</td> <td>£770</td> <td>£110</td> <td>£110</td> <td>£545</td> <td>£110</td> <td>£1,645</td> <td>£329</td> </tr> <tr> <td>5 Year Lic</td> <td>£770</td> <td>£110</td> <td>£110</td> <td>£110</td> <td>£110</td> <td>£1,210</td> <td>£242</td> </tr> </tbody> </table> <p data-bbox="140 1534 1436 1612">3.6 What this shows is that a 5 year licence period will allow for an overall saving to the licensee.</p> <p data-bbox="236 1646 750 1680"><u>Financial and Resource Implications</u></p> <p data-bbox="140 1713 1436 1780">3.7 The proposed Pavement Café Licence fees will ensure the cost of the operational and administration processes are proportionate to the licensing scheme.</p> <p data-bbox="236 1814 821 1848"><u>Equality and Good Relations Implications</u></p> <p data-bbox="140 1881 1436 1948">3.8 Equality and good relations implications are being reviewed and a completed screening form will be forwarded to the Equality and Diversity Officer.</p>		2016/2017	Say	Grant Application Fee - <i>Non refundable</i>	£661.00	£660	Renewal Application or Variation Fee - <i>Non refundable</i>	£433.50	£435	Licensed Fee (yearly)	£110.00	£110		Year 1	Year 2	Year 3	Year 4	Year 5	Total	Ave cost	1 Year Lic	£770	£545	£545	£545	£545	£2,950	£590	3 Year Lic	£770	£110	£110	£545	£110	£1,645	£329	5 Year Lic	£770	£110	£110	£110	£110	£1,210	£242
	2016/2017	Say																																											
Grant Application Fee - <i>Non refundable</i>	£661.00	£660																																											
Renewal Application or Variation Fee - <i>Non refundable</i>	£433.50	£435																																											
Licensed Fee (yearly)	£110.00	£110																																											
	Year 1	Year 2	Year 3	Year 4	Year 5	Total	Ave cost																																						
1 Year Lic	£770	£545	£545	£545	£545	£2,950	£590																																						
3 Year Lic	£770	£110	£110	£545	£110	£1,645	£329																																						
5 Year Lic	£770	£110	£110	£110	£110	£1,210	£242																																						

4.0	Document Attached
	Statement of fees