



Subject:	Licensing of Pavement Cafés - Role of the Licensing Committee
Date:	14th December, 2016
Reporting Officer:	Stephen Hewitt, Building Control Manager, ext. 2435
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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	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: <ol style="list-style-type: none">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; and3. 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
	<p data-bbox="272 219 432 255"><u>Key Issues</u></p> <p data-bbox="164 286 1452 454">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.</p> <p data-bbox="164 488 655 524">3.2 A copy of the Act is attached.</p> <p data-bbox="164 557 1452 622">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.</p> <p data-bbox="164 656 1452 757">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.</p> <p data-bbox="164 790 1452 891">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.</p> <p data-bbox="272 925 1050 960"><u>The Role of Committee in the Decision-Making Process</u></p> <p data-bbox="164 987 1452 1120">3.6 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.</p> <p data-bbox="164 1144 1452 1319">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.</p> <p data-bbox="164 1339 1452 1547">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.</p> <p data-bbox="164 1568 1452 1668">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.</p> <p data-bbox="272 1704 584 1740"><u>Scheme of Delegation</u></p> <p data-bbox="272 1765 1153 1800"><u>1. Applications where no adverse representations are received</u></p> <p data-bbox="164 1832 1452 1964">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.</p>

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 affects 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, transfer 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.
	<u>Financial and Resource Implications</u>
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.
	<u>Equality or Good Relations Implications</u>
3.24	There are no equality or good relations implications associated with this report.
4.0	Document Attached
	The Licensing of Pavement Cafés Act (NI) 2014