



TITLE OF CONSULTATION: INTRODUCTION OF PAVEMENT LICENCES UNDER THE PROPOSED BUSINESS AND PLANNING BILL

OFFICER REQUESTING: ROB ROBINSON – ENVIRONMENTAL HEALTH MANAGER

1.0 PURPOSE

- 1.1 To outline the Council's approach to Pavement Licensing and the processing of applications following the re-opening of the hospitality sector on 4 July 2020.
- 1.2 (i) To grant delegated powers to determine pavement licence applications
(ii) To set a pavement licence application fee
(iii) To set standard pavement licence conditions

2.0 RECOMMENDATION(S)

- 2.1 It is recommended that:
- (i) The determination of applications be delegated to the Environmental Health Manager (or in his absence the Environmental Health Officer employed in the Environmental Health Department or Senior Licensing Officer).
- (ii) The fee for applications be set at £100 (statutory maximum)
- (iii) The standard pavement licence conditions attached at Annex A be approved, noting the proposed changes to the minimum pavement width and barriers outlined at sections 3.6 & 3.8 below.

3.0 REASON FOR RECOMMENDATION(S)

- 3.1 On Thursday 25 June 2020 the Business and Planning Bill was introduced to the House of Commons by the Government which introduces a new 'temporary pavement licence' to enable businesses selling food and drink to apply to their local authority for authorisation to put furniture such as tables and chairs on the highway adjacent to their premises. The regime is a temporary measure, with licences granted lasting up to 30 September 2021 unless surrendered or revoked by the local authority.
- 3.2 The current regime for placing tables and chairs on the highway is administered by North Yorkshire County Council under the Highways Act 1980 which is recognised as both a complex and lengthy process. The new Bill introduces a streamlined, fast-track process for businesses to secure a licence which would be determined and administered by Ryedale District Council. The Bill outlines a 7 day public consultation period, followed by a further 7 days for the local authority to determine the application, if no decision is made the licence is automatically deemed granted for a period of 12 months.

3.3 Although the Bill is yet to become law, there are a number of matters which need to be considered to ensure the Council is in a position to accept applications for these licences. Given the nature of available highways/pavements within Ryedale and its main towns, it is estimated that between 20-30 premises may be able to provide such seating.

3.4 The reasons for the above recommendations are as follows:

- Delegation - Given the tight timescales involved it is not practicable for applications to be determined by the Licensing Committee. Instead it is proposed that Officers make decisions based on set criteria and after taking into account consultation responses, legal provisions and relevant guidance.
- Fees - The Bill permits local authorities to charge an application fee not exceeding £100. It is proposed to charge the statutory maximum as it is unlikely to cover the full costs incurred in processing applications.
- Consultation - Officers consider it important to consult broadly when determining applications thereby helping to mitigate any potential issues which may arise from street furniture being placed on the highway. Consultees will include the Police Authority, Fire Authority, the Council's Environmental Health Department and Town/Parish Councils on applications, in addition to the statutory consultation with the public and Highways Authority.
- Conditions - The draft guidance encourages local authorities to publish draft conditions which address matters such as public health and safety, public amenity and accessibility.

3.5 When deciding on conditions Officers have tried to mitigate the risks identified below whilst trying to not over burden businesses. This has resulted in two key changes between the conditions currently imposed by NYCC under the Highways Act 1980 and those proposed by Officers under the new regime. These changes are outlined below.

Available pavement width

3.6 Officers have considered the current requirement of NYCC for a 2 metre wide unobstructed pedestrian route to be maintained for those walking past a premises with table and chairs. Taking into account the premises in Ryedale and street widths available, such a requirement may disqualify the majority of premises from applying.

3.7 Therefore to ensure as many businesses as possible are able to benefit from a licence, it is proposed that a reduced width of 1.5m be adopted which is provided for in the Inclusive Mobility guidance in cases where there are physical constraints. The impact this proposal has on pedestrian flow and access would be closely monitored and amended if required.

Barriers

3.8 Again Officers have considered the current requirement of NYCC for the operator to install barriers around the boundary of the licensed area. Although barriers can define an area, they may also potentially impede pedestrian flow and may not be appropriate in all circumstances. It is also considered that the added cost of barriers may be disproportionate and contrary to the aims of the new regime. To address this Officers recommend consideration of the need for barriers on a case by case basis and request barriers where deemed necessary.

4.0 SIGNIFICANT RISKS

4.1 The following risks have been identified:

- Risks to public health or safety – i.e. encouraging users to breach government guidance on social distancing by placing tables and chairs too close together or a failure to control the area
- Obstruction of the highway (other than by anything permitted by the licence)
- Anti-social behaviour or public nuisance – i.e. increased amounts of noise generated late at night and litter affecting neighbouring properties
- Risk to the economic recovery of premises who could benefit from the extra covers generated by a pavement licence by not granting a licence

4.2 In mitigation of the above the local authority reserves the right to revoke a licence should an operator fail to rectify a related issue or concern and thus protect public safety and amenity. The same also applies if a condition imposed on a licence (either by the local authority) or nationally is breached.

5.0 IMPLICATIONS

5.1 The following implications have been identified:

- a) Financial
Officers do not consider it likely that there will be a significant uptake of these licences. Additional costs not covered by the fee will be tracked and recorded for the MHCLG submission.
- b) Legal
The Business and Planning Bill is yet to receive Royal Assent and therefore may be subject to amendment. In addition the guidance available is currently in draft form.
- c) Other (Equalities, Staffing, Planning, Health & Safety, Environmental and Climate Change, Crime & Disorder)
Reducing the width of available highway may be of detriment to less able people, particularly those who require the use of a wheelchair or are visually impaired. Therefore it is important that the needs of a business are balanced against the safety of all pedestrians.

6.0 MONITORING OFFICER ADVICE

The decision around delegations would normally be a Full Council decision, based on a recommendation from Licensing Committee and is a matter of process, so the Chair of Council, the Leader and the Chair of Licensing Committee should be consulted. The fee is also a Full Council decision under business as usual, on the recommendation of Policy and Resources Committee, and this is covered by the consultees above.

7.0 CONSULTATION RECORD

According to the Constitution, under urgency powers, decisions usually taken by the Council and its committees are taken by the CEO following consultation with the appropriate elected members.

The appropriate elected members are:

- The Leader of the Council
- The Chair of the appropriate committee, for matters relating to that specific committee¹
- Relevant Ward member(s), if any, for matters of particular relevance to that ward²

Name of consultee	Cllr Cleary – Chair of Council
Cllr Cleary confirmed on 7 July 2020 that he is satisfied with the recommendations.	
Date consultation completed	07-07-20

Name of consultee	Cllr Windress – Chair of the Licensing Committee
Cllr Windress confirmed on 9 July 2020 that he is satisfied with the recommendations.	
Date consultation completed	09-07-20

Name of consultee	Cllr Duncan – Leader of Council
This decision is urgently required in order to designate powers in line with government legislation. It will help hospitality businesses boost trade at this difficult time.	
Date consultation completed	10-07-20

8.0 DECISION

Decision of the Acting CEO (Phillip Spurr) based on consultation	The recommendations are approved.
Date	10-07-20

¹ “Chairman of the appropriate Committee” refers to committee specific matters and does not mean that all Committee Chairs will be consulted on everything

² “Relevant Ward Member(s), if any” refers to ward specific matters and does not mean that all Members will be consulted on everything