

Report of the Director of Regulatory Services

## **PAVEMENT CAFÉ LICENSING – CORONAVIRUS RECOVERY**

### **PURPOSE OF REPORT**

This report explains a new licensing requirement for pavement cafes that is proposed by Government to assist businesses in the hospitality trade with the economic recovery. The report sets out a first draft of the processes that could be applied and recommends a scheme of delegation for the issuing and refusal of licence, and for the fee that should be charged in respect of these new licences.

### **RECOMMENDATION**

1. That the District Council adopts a fee of £100 for the determination of applications for Pavement Café licences;
2. That regulation of pavement café licensing is discharged to the Licensing Committee, with specific decisions being delegated to officers as detailed at paragraph 3.6 of this report is adopted.

### **WARDS AFFECTED**

All

### **STRATEGIC LINK**

Assisting business with their economic recovery from the effects of Covid-19 lockdown links strongly with the Council's priorities around local prosperity.

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### **1 REASON FOR URGENCY**

- 1.1 The Chairman has agreed to accept this report as an item of urgent business, in order to respond to an external deadline.

### **2 BACKGROUND**

- 2.1 On 25 June 2020 the Government announced new measures to assist business with economic recovery following the easing of Covid-19 lockdown restrictions. In particular Government outlined new laws and guidance to support pubs, cafes and restaurants through simpler licensing processes for outdoor seating for pubs, restaurants and cafes.
- 2.2 This announcement was followed with the publication of the Business and Planning Bill, which sets out in detail how Government initially see the measures being implemented. Although this is yet to be translated in law, the Bill makes it clear that the new system will be operated by district councils in two tier local authority areas. At the present time, the limited pavement café licensing that is undertaken in Derbyshire is operated by Derbyshire County Council.
- 2.3 The announcement, Bill and subsequent Guidance all make it clear that Government

sees this measure as a major plank in their plans to facilitate the economic recovery of businesses in the hospitality sector and there is a very apparent expectation that councils should assist, rather than hinder the process. This represents a significant shift in emphasis, from keeping certain businesses closed or allowing only limited operations, to assisting them with their reopening by enabling a new way of working. It is recognised that this may not accord with all residents' wishes in every case. Nevertheless it is necessary for Derbyshire Dales District Council to put itself in a position when it can begin to operate the new powers as soon as they are introduced. This report sets out the basics of how the system is expected to operate, sets a fee for the service and suggests a scheme of delegation to enable the system to work effectively, within the very tight timescales that councils will be allowed to process and determine applications.

### **3 REPORT**

- 3.1 The Bill sets out the process that must be followed in relation to processing an application. To simplify; an application must contain information set out in the Bill, including specifying the area of land, the type of equipment to be placed on it, and the days it will be used. A public consultation must then be undertaken for 7 days. The local authority must also consult the Highways Authority and any other person it considers to be appropriate. On receipt of consultation responses the local authority must consider those responses and then must grant or refuse the licence within a further 7 days.
- 3.2 If a determination is not made within these tight timescales then the licence is deemed to be granted.
- 3.3 The maximum fee that may be charged for this service is £100, but local authorities are free to charge a lesser amount, or to waive the fee, if they wish.
- 3.4 In preparing for this new responsibility Derbyshire Dales District Council is having to set up whole new processes in a very short space of time, as are many other district and borough councils. Whilst recognising that the Council is there to support economic recovery, this work does not come without a significant cost in officer time. Therefore the officer recommendation is that the fee for Derbyshire Dales District Council is set at £100, in order to recover as much of the cost of administering the new system as possible. Derbyshire County Council previously charged £300 per application for up to 6 seats, with a further £50 per additional site. If information about the fees proposed by other Derbyshire authorities is available it will be brought before Members at the meeting, but it is worth noting the significant reduction in fee from that previously charged by Derbyshire County Council.
- 3.5 Administering the new system is clearly a licensing task and sits most naturally within our Licensing Team; part of the Regulatory Services directorate. However, in preparing for the new system, additional help has been provided by the Business Support Team, which is much appreciated. Nevertheless it is proposed that the new systems and processes required to operate the new system are developed by the Licensing Manager, in consultation with the Director of Regulatory Services, allowing for the short notice that has been given for their development. Whilst recognising that Members will naturally be interested in the finer detail of issues such as consultation, officers need to be able to respond flexibly to the new arrangements and develop systems that work for all parties. In doing so, they will consult with colleagues from around the county, through a specific group of licensing and environmental health professionals that has been formed for this purpose. More detail on the arrangements will be available for

Members in due course.

- 3.6 In addition, in order to enable this provision to work effectively and efficiently it is necessary for officers to obtain delegated authority to issue or refuse licences and to undertake enforcement actions. A recommended scheme of delegation is set out below:

<b>Section</b>	<b>Provision</b>	<b>Delegation</b>
Clause 3, Business and Planning Bill	Issue or refusal of Pavement Café licences	Licensing Manager, Director of Regulatory Services, Environmental Health Manager
Clause 4, Business and Planning Bill	Determine duration of Pavement Café Licences	Licensing Manager, Director of Regulatory Services, Environmental Health Manager
Clause 5, Business and Planning Bill	Impose conditions on a Pavement Café Licence	Licensing Manager, Director of Regulatory Services, Environmental Health Manager
Clause 6, Business and Planning Bill	Service of breach of conditions notice in relation to a Pavement Café licence	Licensing Manager, Director of Regulatory Services, Environmental Health Manager
Clause 6, Business and Planning Bill	Revoke Pavement Café Licence	Licensing Manager, Director of Regulatory Services, Environmental Health Manager
Clause 6, Business and Planning Bill	Recover costs for action taken in respect of a breach of conditions in relation to a Pavement Café licence	Licensing Manager, Director of Regulatory Services, Environmental Health Manager

- 3.7 Enforcement action will be undertaken in accordance with the Council's Enforcement Policy and this means that officers will adopt a phased approach in general. Officers working in the Licensing and Environmental Health teams will take the lead role in investigating complaints and instigating any action.
- 3.8 The Bill specifies that these provisions are time limited and will expire at the end of 30 September 2021, so that any licence granted will cease at that time, subject to any future amendments of the Act that will presumably follow the Bill.

## **4 RISK ASSESSMENT**

### **Legal**

- 4.1 The legal framework which establishes regulation of pavement café licences is set out in the report. The legal risk is therefore low.

### **Financial**

- 4.2 The officer recommendation is that the fee for determining a Pavement Café Licence is set at £100, in order to recover as much of the cost of administering the new system as possible. The financial risk is assessed as low.

## **5 OTHER CONSIDERATIONS**

In preparing this report, the relevance of the following factors has also been considered: prevention of crime and disorder, equalities, environmental, climate change, health, human rights, personnel and property.

## **6 CONTACT INFORMATION**

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## **7 BACKGROUND PAPERS**

None

## **8 ATTACHMENTS**

None