

Public Agenda Item: **Yes**

Title: **Pavement Café Policy**

Wards Affected: **All**

To: **Licensing Committee** On: **18 February 2016**

Key Decision: **No**

Change to Budget: **No** Change to Policy Framework: **No**

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1. **What we are trying to achieve**

1.1 Members are being asked to agree a new Pavement Café Policy.

2. **Recommendation(s) for decision**

2.1 That the Pavement Café Policy 2016-21 be approved.

3. **Key points and reasons for recommendations**

3.1 By the provisions of the Highways Act 1980 as amended by the Local Government (Miscellaneous Provisions) Act 1982, Torbay Council is the Licensing Authority in respect of Pavement Café Licences.

3.2 The Licensing and Highway Teams have been in discussions during 2015-16, and agreed for the transfer of the licensing of Pavement Cafés to the Licensing Team from the 18th February 2016, in line with this new Policy. See Appendix One. This improves efficiencies as the majority of Pavement Café Licensed Premises also have Premises Licences or Club Premises Certificates under the Licensing Act 2003, which are already administered by the Licensing Team. The Highways Team will remain a consultee to this process.

- 3.3 The draft document has undergone a six week consultation with partner agencies, i.e. Highways, The Police, Public Nuisance Officer as well as the current Pavement Café Licence holders.
- 3.4 The new Pavement Café Policy 2016-21 will have limited impact on current Pavement Café Licence holders, except that those with more than 5 tables will need to dedicate 50% or more of those tables as non-smoking, with appropriate signage.
- 3.5 There are new opportunities to have non amplified music, based upon changes to the application process as well as allowing a limited number of amplified events. Both opportunities will incur additional fees to cover the additional Local Authority work.
- 3.6 This is a risk of a challenge to this policy, which would be by way of judicial review. This however is considered unlikely.

For more detailed information on this proposal please refer to the Supporting Information.

**Frances Hughes
Assistant Director Community and Customer Services**

Supporting information to Report

A1. Introduction and history

- A1.1 By the provisions of the Highways Act 1980 as amended by the Local Government (Miscellaneous Provisions) Act 1982, Torbay Council is the Licensing Authority in respect of Pavement Café Licences.
- A1.2 The Licensing and Highway Teams have been in discussions during 2015-16, and agreed for the transfer of the licensing of Pavement Café Licences to the Licensing Team from the 18th February 2016, in line with this new Policy. See Appendix One. This improves efficiencies as the majority of Pavement Café Licensed premises also have Premises Licences or Club Premises Certificates under the Licensing Act 2003, which are already administered by the Licensing Team. The Highways Team will remain a consultee to this process.
- A 1.3 The requirements of the new policy placed on an existing Pavement Café Licence holder remain broadly similar, although there are a number of additional opportunities and changes which are described below.
- A1.4 The times of opening Pavement Café designated areas, will remain the same, being from 1000 to 2300, though these can be extended by the applicant with the agreement of the consultees, notably Highways, the Police and Public Nuisance officer. No Pavement Café Licence will be issued after midnight however.
- A1.5 Currently no music is allowed in the Pavement Café Licensed area, though this is at odds with the guidance issued under Section 182 of the Licensing Act 2003, which covers the same designated area. It is therefore proposed that the applicant can apply for acoustic/non amplified music and song with the payment of a small additional fee, which will cover the additional costs. This forms part of the initial application.
- A1.6 There are occasions where amplified music (live or recorded) will be requested for the designated area, which has the significant potential for noise complaints. This is most likely to be requested by those premises that sell alcohol under a Premises Licences or Club Premises Certificates granted by the Licensing Act 2003. If this is the case they have an exemption under the Licensing Act for Live Music, so no Temporary Event Notice is required. Any control/management of the potential noise nuisance is through restrictions under the Pavement Café Policy. It is therefore proposed, by way of an application, that the Pavement Café Licence holder applies for an 'Amplified Music Permission'. This will initially be restricted to five days per calendar year, as a pilot, to ascertain the likely impact this has on neighbours.
- A1.7 The other significant change is providing tables for non smokers within these designated Pavement Café Licensed areas. Currently there are no restrictions. It is therefore proposed that for premises with more than 5 tables, 50% or more of those tables must be designated smoke free, with appropriate signage.
- A1.8 This is a risk of a challenge to this policy, which would be by way of judicial review. This however is considered unlikely.

A2. Risk assessment of preferred option

A2.1 Outline of significant key risks

The new Pavement Café policy, although identifying new opportunities, does not alter the operation of a Pavement Café Licensed area significantly, with the exception of introducing some non smoking areas. The key risk is a judicial review, though this is not considered likely.

The annual renewal of Pavement Café Licences is about to commence so not agreeing a policy presents a small risk, though renewals could continue, without the current proposed changes, but it would slow down the changes which will bring efficiencies.

A3. Options

A3.1 There are two other options:

- (i) Members alter the policy then agree the amended policy.
- (ii) Members refuse the recommendation.

A4. Summary of resource implications

A4.1 There are some resource implications for the approval of the recommendation, as there will be some costs in delivering the new policy, but in time it is anticipated there will be overall savings to Torbay Council.

A5. What impact will there be on equalities, environmental sustainability and crime and disorder?

A5.1 There are no equality or sustainability issues regarding this report.

A5.2 There are some potential crime and disorder implications, however the Police have been consulted on the draft policy and will remain a consultee.

A6. Consultation and Customer Focus

A6.1 There has been consultation with all current Pavement Café Licence holders and the key partners.

A7. Are there any implications for other Business Units?

A7.1 There are no significant implications for other business units, if the recommendations are supported.

Annexes

Appendix 1 List of consultee responses

Appendix 2 Draft Pavement Café Policy 2016-21

Documents available in members' rooms

None

Background Papers:

The following documents/files were used to compile this report:

None