



Report Reference Number: L/21/1

To: Licensing Committee
Date: 16 August 2021
Status: Non-Key Decision
Ward(s) Affected: Whole District
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Lead Executive Member: Councillor T Grogan, Lead Member for Health & Culture
Lead Officer: Alison Hartley, Solicitor to the Council

Title: – Proposal to impose a 100% smoke free pavement licences from October 2021

Summary:

The Business and Planning Bill made district councils responsible for issuing Pavement licences from 1 July 2020. These Licences were due to expire and go back to Highways to administer as of the 30th September 2021, but the Government has now extended this to 30th September 2022.

A pavement licence allows the licence-holder to place removeable furniture over certain highways adjacent to the premises in relation to which the application was made, for certain purposes.

There is already a national condition on all pavement consents (Appendix 1) that the licence holder must provide a smoke free seating area with no smoking signs being required in those areas. This is to comply with Section 149 Equality Act duty.

The National Tobacco Control Strategy aims to provide a smoke free generation by 2030. North Yorkshire Public Health are behind this strategy and want to collaborate with districts with a focus on pavement consents becoming smoke free seating areas, with a consideration for districts to consider adopting a 100% smoke free condition of licence.

1. Recommendations

To consider amending condition 3 of Selby's pavement consents, from the national requirement to provide a smoke free zone in the area to imposing a local condition, making the consent area 100% smoke free for all new and renewal pavement consents issued after 30th September 2021.

2. Introduction and background

2.1 A pavement licence allows the licence holder to place removeable furniture on the highway adjacent to the premises to which the application was made for certain purposes.

2.2 The business planning bill introduced a new pavement licence issued by district councils from the 22 July 2020. The operators of businesses selling food and drink may apply to the local authority for authorisation to put the furniture on such as tables and chairs on the highway adjacent to the premises to sell food and drink and/or for customers to use. This legislation was due to be temporary until 30th September 2021, however due to the ongoing Coronavirus pandemic, this has been extended until 30th September 2022, with the possibility of this been made permanent.

2.3 Processes and procedures were approved under an emergency decision last year, at this stage the conditions to be placed on the licence were agreed, this included condition 3, which was imposed nationally to comply with Section 149 Equality Act duty, which states that:

'You must provide a smoke free seating area. to comply with this a clear 'smoking' and 'non-smoking' areas, with 'no smoking' signage displayed in designated 'smoke-free' zones in accordance with Smoke-free (signs).'

2.4 A letter from North Yorkshire Public Health (Appendix 2) and additional information on what happens when you quit (Appendix 3), has been sent to all Selby pavement licence holders, as recommended by Public Health, asking licence holders to consider implementing a 100% smoke free pavement area voluntarily. However, members may wish to consider, amending licence condition 3 for all renewals and new applications received after 30th September 2021, and instead imposing a condition that all pavement consents issued are 100% smoke free, in line with the Tobacco Control Strategy; and its aims to achieve a smoke free generation by 2030.

2.5 Several authorities have already adopted the 100% smoke free policy including Durham, North Tyneside, Newcastle, and Northumberland.

2.6 If the committee resolve to include a 100% smoke free policy following the request from Public Health, no consultation would be required due to it being a locally imposed condition. The decision would be published once agreed, and the new locally agreed condition would be imposed on all renewals or new pavement consents granted after 30 September 2021. Pavement licences issued currently would not be amended.

3. Legal Implications

3.1 There are two options in regard to the smoking provision, either adopt the national condition which requests some smoke free seating area or implement

a local condition requesting a 100% smoke free seating area. The Council currently implements the national condition.

- 3.2** The Business and Planning Act 2020 permits the Council to set local conditions and where the local authority does impose local conditions, they need to provide reasonable justification for doing so.

The guidance states:

“Where a local authority sets a local condition that covers the same matter as set out in national conditions, then the locally set condition would take precedence over the national condition where there is reasonable justification to do so”.

- 3.3** These conditions only apply to licences granted under the Business and Planning Act 2020 and not, for example, licences permitted under Part7A of the Highways Act 1980.
- 3.4** There is no statutory appeal process for these decisions.
- 3.5** If a condition on the licence is breached, the Council has the following options:
- (a) issue a notice requiring the breach to be remedied. If the notice is not complied with, the Council may take steps to remedy the breach and take action to cover any costs.
 - (b) Revoke the licence.

4. Financial Implications

There are no financial implications.

5. Policy and Risk Implications

There are no Policy and risk implications.

6. Conclusion

As per the recommendation in this report

7. Appendices

Appendix 1 – Current pavement licence consents
Appendix 2 – letter sent to current licence holders
Appendix 3 – additional information on quitting

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