

Report on	Guidance for Applicants on Pavement Café Licensing
Date of Meeting	7 th July 2020
Reporting Officer	Fiona McClements, Head of Environmental Health

Is this report restricted for confidential business?	Yes	
If 'Yes', confirm below the exempt information category relied upon	No	X

1.0	Purpose of Report
1.1	To inform Members of the pavement café licence application process and to seek agreement of the " <i>Licensing of Pavement Cafés Act (NI) Act – MUDC Guidance for Applicants</i> " document and its associated Equality Screening.
2.0	Background
2.1	Mid Ulster District Council has the power to regulate and licence pavement cafés as set out in the " <i>Licensing of Pavement Cafés Act (Northern Ireland) 2014</i> " ('the Act') and associated Regulations.
2.2	This statutory licensing scheme for the regulation of pavement cafes by district councils in Northern Ireland under the aforementioned legislation, facilitates the controlled expansion of suitable premises such as cafes, restaurants and pubs in support of a vibrant daytime and evening economy, in addition to general wellbeing of communities.
2.3	<p>The scheme allows Councils to:</p> <ul style="list-style-type: none"> • Authorise a person carrying on a business involving the supply of food and drink to place tables, chairs etc. in a public place; • Require the applicant to fix a notice to the premises and submit a plan of the proposed pavement café area; • Impose conditions on the licence; • Vary, suspend or revoke the licence; • Charge a reasonable fee; and • Take enforcement action including the removal of facilities in certain circumstances.
2.4	When the pavement café legislation was first introduced, Members resolved that zero application fee would apply and that licences would be granted to all applicants on an annual basis in the first instance.
2.5	<p>Concerns of disability action groups:</p> <p>Since the introduction of 'the Act' in 2014 there has been ongoing pressure on the NI Assembly from lobby groups for disabled people across Northern Ireland who have raised concerns that the guidance produced to date does not go far</p>

	<p>enough to prevent pavement cafés from causing further obstruction to pavement users; particularly those with disabilities. The guidance provided by the DfI Roads in respect of minimum footway widths has been the subject of significant concern for disabled groups.</p>
2.6	<p>In order to ensure that no sector of the community is adversely impacted by the implementation of the pavement café licensing regime, the guidance document has been subject to the MUDC Equality Screening process.</p>
3.0	Main Report
3.1	<p>As the Council is committed to supporting the hospitality sector as cafés, restaurants, bars and hotels move towards recovery from the Covid-19 pandemic, the application process for obtaining a pavement café has now opened.</p>
3.2	<p>The challenges that re-opening business premises may present in terms of social distancing, as well as the opportunities which on-street seating areas offer to help meet these requirements and to help create a café culture that the community can enjoy are recognised.</p>
3.3	<p>The draft MUDC guidance and associated forms prepared for applicants on the licensing of pavement cafés (Appendices 1 to 3) has been prepared to help those making an application and they detail the factors that may be taken into account when the decision to grant or refuse a pavement café licence is being considered.</p>
3.4	<p>The draft MUDC guidance is consistent with the Department for Communities' (DfC) "<i>Guidelines to the Licensing of Pavement Cafés Act (NI) 2014 – July 2019</i>" on the implementation of pavement café licensing (Appendix 4). The DfC guidelines on pavement cafés also incorporate information prepared by the 'Licensing Forum for Northern Ireland' (LFNI) and which is currently utilised by all Councils within Northern Ireland.</p>
3.5	<p>The MUDC guidance also includes Department for Infrastructure - Roads' (DfI Roads) technical information to ensure that there is a consistent application of interpretation regarding the factors relating to pavement café layout, design, and issues that may affect other pavement users such as those with disabilities.</p>
3.6	<p>As councils are required to consult with DfI – Roads when considering an application for a Pavement Café Licence, their advice is crucial to ensure that any implications for pedestrians and public safety issues are properly taken into account.</p>
3.7	<p>In addition to implementing 'the Act', the Council also has a statutory duty to consider the likely equality and good relations impacts of its proposed pavement café licensing guidance on all citizens, service users, staff and visitors to the district. An equality screening exercise in connection with the guidance, is underway (see Appendix 5).</p>

3.8	<p>The equality screening identified that three groups of the community were likely to experience a minor negative impact on their equality of opportunity, namely:</p> <ul style="list-style-type: none"> • Older citizens; particularly those with mobility or visual impairment; • Citizens with disability, particularly those who have mobility or visual impairment; and • Those who have dependants, particularly those with young children in prams.
3.9	<p>Although the impact on the above groups has been mitigated within the guidance, it is however recommended that Council re-evaluate the guidance within 3 months of its approval to ensure that any remaining negative impacts can be resolved at an early juncture within the implementation of the licensing regime.</p> <p><u>Making an Application</u></p>
3.10	<p>The application process is set out within the draft guidance for applicants and the suitability criteria for a pavement café licence to be considered is also given in more detail (on pages 10 – 14 of draft guidance). In general terms consideration of the following is required:</p> <ul style="list-style-type: none"> • Pedestrian and vehicular access; • Size, layout and boundaries; • Likely disturbance to other businesses or residents; • Furniture design; • Safety and control issues.
3.11	<p>‘Furniture’ includes chairs, umbrellas, barriers, heaters, menu boards etc. and all must be of good quality and of a temporary nature so that they can be removed within 20 minutes.</p>
3.12	<p>Every application for a pavement café licence will be considered on a case by case basis, however, in general the outdoor seating area should:</p> <ul style="list-style-type: none"> • Avoid conflict with the principal lines of pedestrian movement • Avoid conflict between customers going in and out of the pavement café, passing pedestrians and neighbouring premises. • Facilitate adherence to the current social distancing requirements / advice. • Ideally be confined to the frontage of its own premises with close integration of internal and external activities however this does not preclude a remote location. • Allow 10 metres clearance at road junctions / vehicular access for visibility. • Where street space is available a minimum clearance width of 2 metres

	<p>between the edge of the licensed site and the kerbside should be allowed. Where this is not possible because of physical constraints a minimum of 1.5 metres clear width should be provided.</p> <ul style="list-style-type: none"> When in use, the pavement café area should ideally be enclosed, by way of adequate screening, to demarcate the licensed area and contain the tables and chairs, in order to make it distinguishable to other pavement users, and to assist blind and visually impaired pedestrians.
3.13	<p>The area to be used must take into account other needs in the immediate vicinity (e.g. kerbside parking, loading bays, bus stops, emergency vehicle access, emergency exits, street cleaning machines, and pedestrian crossings).</p>
3.14	<p>Additionally, the pavement café area will need to be set-up immediately adjacent to the premises. However, a licence for a remote café may be granted where the proposed café does not interfere with both vehicular and pedestrian traffic flow; and the licence holder is able to demonstrate that they will be able to exercise proper control and supervision of the pavement café area.</p> <p><u>Hours of Operation</u></p>
3.15	<p>Licences will normally be granted for a set period between 8.00 am and 11.00 pm and will be reflective of the normal operating hours of the business. If the premises are licensed under the Licensing Order a licence will not be issued beyond 11.00pm, regardless of any additional operating hours that may apply to the premises.</p> <p><u>Supporting Documentation</u></p>
3.16	<p>All applications for a pavement café licence must be accompanied by the following:</p> <ul style="list-style-type: none"> Location plan Proposed Café plan <p>A plan must be provided to a scale of not less than 1:100 of the proposed pavement café area, the streetscape and all utilities and services including lampposts, bollards, fire hydrants, manholes, cycle stands, litter bins and any other items of street furniture located within the immediate vicinity. The dimensions of the proposed pavement café area must also be shown.</p> <ul style="list-style-type: none"> Details of the furniture <p>Provide details of the number, materials and types of chairs, tables, umbrellas, etc., to be provided in the café. (Manufacturers details of the furniture or photographs of the existing furniture would be an advantage).</p> <ul style="list-style-type: none"> A copy of the alcohol licence (if appropriate) Evidence of £5 million Public liability insurance cover (if successful)

	<ul style="list-style-type: none"> • Planning permission (where appropriate) • Management Control Plan (for Remote cafés) <p>If the pavement café is to be located away from the main premises or patrons and staff need to cross a public road to reach the café, then a management control plan must be provided.</p> <ul style="list-style-type: none"> • Signed Declaration regarding Public Notice of Consultation <p>A copy of the public notice and the associated signed certification form regarding same must be returned to the Environmental Health Service after the 28 day consultation period.</p> <p><u>Consumption of Alcohol</u></p>
3.17	If an applicant currently has an alcohol licence, Council may decide to grant a condition allowing the consumption (but not sale) of alcohol in the pavement café area, however, this will be subject to consultation with the PSNI.
3.18	Council may, at any time place “an alcohol condition” on a pavement café licence requiring the licence holder not to permit persons to consume intoxicating liquor when using furniture in the area covered by the licence.
3.19	Only premises licensed as a public house, a hotel, a restaurant or a guest house with a restaurant under the Licensing Order will be permitted to have their licensed area for the consumption of alcohol extended to include the pavement café area.
	<u>Consultation Process</u>
3.20	<p>It is recommended that businesses discuss their proposals with adjacent property occupiers to inform them of the application. When assessing an application, Council will also consult with the following agencies:</p> <ul style="list-style-type: none"> • Department for Infrastructure’s Roads Service (DfI Roads); and • The Police Service for Northern Ireland, where the premises is licensed to sell alcohol; • Any other Council Department, organisations or individuals as appropriate.
	<u>Making a Determination</u>
3.21	The Environmental Health Service will aim to provide a determination within 4 to 6 weeks from the date of receipt of a completed application, to allow full and proper consultation in line with Departmental Guidelines, site visits and input from consultees.

3.22	<p>In the event of written representations and objections being received it may however, take up to 12 weeks for a final determination and ratification to be made by Committee and Council.</p> <p><u>Refusing an application</u></p>
3.23	Should an applicant's proposal fail to meet the suitability criteria, then as an alternative to refusing an application they will be notified and may be advised on any amendments which could enable a better fit with the criteria and make the proposal more acceptable. Any objections received by Council will also form part of the considerations by Council to grant or vary a licence.
3.24	Although all applications will be considered on a case-by-case basis, it may not always be possible to accommodate pavement cafés in all locations due to factors such as visual impact, width restrictions, obstructions or very heavy pedestrian flow.
3.25	Should an application be refused the applicant may appeal the decision to the Magistrates' Court within 21 days of being notified of the Council's decision.
3.26	Licence holders may also appeal a decision to suspend or revoke a licence or vary the area and conditions of a Pavement Café Licence (as an alternative to revocation), or to limit the duration of a licence.
4.0	Other Considerations
4.1	Financial, Human Resources & Risk Implications
	Financial: N/a
	Human: Environmental Health Officers and Environmental Health administrative staff time to process applications and provide guidance to applicants.
	Risk Management: N/a
4.2	Screening & Impact Assessments
	Equality & Good Relations Implications: See attached Equality and Good Relations Screening report (Appendix 5).
	Rural Needs Implications:
5.0	Recommendation(s)
5.1	It is recommended that Members approve the draft MUDC " <i>Licensing of Pavement Cafés Act (NI) 2014 – Guidance for Applicants</i> ".
5.2	It is recommended that Members agree the Equality and Good Relations Screening Report in relation to the pavement café guidance and associated forms.

6.0	Documents Attached & References
6.1	Draft MUDC “ <i>Licensing of Pavement Cafés Act (NI) 2014 – Guidance for Applicants</i> ” (Appendix 1).
6.2	Application form – (Appendix 2).
6.3	Template Public Notice – Application for a Pavement Café Licence - (Appendix 3)
6.4	Department for Communities’ (DfC) “ <i>Guidelines to the Licensing of Pavement Cafés Act (NI) 2014 – July 2019</i> ” on the implementation of pavement café licensing (Appendix 4).
6.5	Equality and Good Relations Screening Report (Appendix 5).
6.6	Licensing of Pavement Cafés Act (Northern Ireland) 2014 – (Appendix 6).