

AGENDA ITEM

REPORT TO CABINET

16 July 2020

**REPORT OF CORPORATE
MANAGEMENT TEAM**

CABINET DECISION

Access & Communities –Lead Cabinet Member – Councillor Steve Nelson

Business & Planning Act 2020 – Pavement Licence and Modification to Premises Licences under The Licensing Act 2003

SUMMARY

To inform Cabinet of proposed new legislation in the Business & Planning Bill 2020 which is expected to receive Royal assent on 20 July 2020. The Act once approved will introduce a new pavement licence and modify premises licenses granted under the Licensing Act 2003. The Act will allow operators of 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 to sell food and drink from and/or for their customers to use. In addition the Act will modify premises licenses to authorise off sales for a limited period.

REASONS FOR RECOMMENDATIONS

The Business and Planning Act 2020 will establish a new approach to licensing activity on the highway that replaces the established regulatory requirements found in the Highways Act 1980 and the Town and Country Planning Act 1990.

RECOMMENDATIONS

It is recommended that Cabinet

1. Note the content of this report
2. Delegate the functions and administration of pavement licence applications made under the Business & Planning Act 2020 to the Assistant Director of Administration, Democratic and Electoral Services.
3. Agree the current capped fee of £100 is implemented to cover in part the pavement licence regime.
4. Agree fees can be reviewed by the Assistant Director of Administration, Democratic and Electoral Services if appropriate.

DETAIL APPLICATION

1. The proposed Business & Planning Act 2020 introduces a new pavement licence which allows businesses such as cafes, restaurants and bars to place removable furniture over certain highways adjacent to the premises for which the application was made, for certain purposes.
2. The furniture is required to be removable, not a permanent fixed structure, and be able to be moved easily and stored away on an evening.
3. This is a fast-tracked system, and the authority will determine an application within 10 days which includes a 5 day consultation with relevant parties.
4. The applicant is required to affix a notice to the premises, so it is easily visible and legible to the public on the day they submit the application to the local authority. They must ensure the notice remains in place for the public consultation period which is the period of 5 working days beginning with the day after the day the application is submitted to the authority.
5. It is a statutory requirement before granting a licence that the local authority will consult with the Highway Authority, and may consult with such other persons as the local authority considers appropriate, such as:
 - Police Service, Fire Service, Licensing Service, Environmental Health
 - Trading Standards, Planning, Public Health, Children's Services
 - Ward Councillors
6. In addition before determining the granting of a licence the local authority can consider other factors such as:
 - Accessibility – taking a proportionate approach in considering the site to which the application is made, the surroundings and users taking account of temporary measures in place for reallocation of road space, permeant street furniture or structures minimum footway widths and distances required for access by mobility impaired and visually impaired people as set out in Section 3.1 of the governments Inclusive Mobility guidance.
 - Proposed measures in place to reduce the likely impact of ASB, noise nuisance and litter.
 - Proposed measures in place for social distancing and reducing the risk of the transmission of Covid19.
7. If the local authority determines the application before the end of the determination period the local authority can:
 - grant the licence in respect of any or all of the purposes specified in the application,
 - grant the licence for some or all of the part of the highway specified in the application, and impose conditions, or
 - refuse the application.
8. There is no statutory appeal process for these decisions.
9. If a local authority determines an application before the end of the determination period (which is 5 working days, beginning with the first day after the public consultation period, excluding public holidays) the authority can specify the duration of the licence, subject to a minimum duration of 3 months. The expectation is that local authorities will grant licences

for 12 months or more unless there are good reasons for granting a licence for a shorter period such as plans for future changes in use of road space.

10. If a licence is 'deemed' granted because the authority does not make a decision on an application before the end of the determination period, then the licence will be valid for a year and subject to any conditions which are published by the local authority.

11. The fee for applying for a licence under the new process, is capped at £100.

CONDITIONS

12. The Secretary of State may publish conditions for pavement licences. This is in addition to the statutory 'no obstruction' condition referred to in 5(4) and 3(6) of the Business and Planning Act 2020.

13. The local authority may impose reasonable conditions whether or not they are published upfront. There is an expectation these will be supported by a clear justification for the need of a condition which is in addition to any published local conditions.

14. Local Authorities are encouraged to publish local conditions subject to which they propose to grant pavement licences so that applicants and those making representations are aware of them.

ENFORCEMENT

15. If a condition imposed on a licence (either by the local authority) or nationally is breached the local authority will be able to issue a notice requiring the breach to be remedied and the authority can take action to cover any costs. The authority may revoke a licence in the following circumstances:

16. For breach of condition, (whether or not a remediation notice has been issued) or where:

- a. There are risks to public health or safety – for example by encouraging users to breach government guidance on social distancing by placing tables and chairs too close together;
- b. the highway is being obstructed (other than by anything permitted by the licence);
- c. there is anti-social behaviour or public nuisance – for example, the use is increasing the amount of noise generated late at night and litter is not being cleaned up;
- d. it comes to light that the applicant provided false or misleading statements in their application – for example they are operating a stall selling hot food and had applied for tables and chairs on which drinks could be consumed; or
- e. the applicant did not comply with the requirement to affix the notice to notify the public for the relevant period.

17. The local authority may also revoke the licence where all or any part of the area of the relevant highway to which the licence relates has become unsuitable for any purpose for which the licence was granted or deemed to be granted. For example, the licensed area (or road adjacent) is no longer to be pedestrianised. It is good practice for local authorities to give reasons where these powers are used.

LICENSING ACT

18. In addition temporary changes to the Licensing Act 2003 will allow premises with alcohol on sales provision, automatic off sales provision for the same hours, any conditions restricting off sales are temporarily suspended.
19. It is important to note the grant of a pavement licence only permits the placing of furniture on the highway. Other regulatory frameworks still apply such as the need for alcohol premise licenses and the need to comply with registration requirements for food businesses.
20. If a Licensing Act premise licence is in place under the Licensing Act the licensing objectives of Prevention of Crime & Disorder, Prevention of Public Nuisance, Protection of Children from Harm and Public Safety must still maintained on the premises, and the statutory powers to review and ultimately revoke a premise licence still remain.
21. A copy of the draft guidance on pavement licences can be found at:

<https://www.gov.uk/government/publications/pavement-licences-draft-guidance/draft-guidance-pavement-licences-outdoor-seating-proposal>

COMMUNITY IMPACT IMPLICATIONS

This new process introduces a streamlined and cheaper route for businesses such as cafes, restaurants and bars to secure a licence to place furniture on the highway. This will support them to operate safely while social distancing measures remain in place. This will provide much needed income over the summer months and protect as many hospitality jobs as possible.

This is a temporary measure to support businesses while social distancing measures may still be in place. As it is uncertain how long some form of social distancing measures will be in place for, the new process will remain in place until the end of September 2021 – giving certainty to businesses for the foreseeable future, supporting them to operate safely while social distancing measures are in place. It will also allow them enough time to apply for new licences under the existing process if they want to extend beyond the end of September 2021.

FINANCIAL IMPLICATIONS

The cost of granting pavement licences will be in part met from the fees paid by applicants. At this time this has been capped by Government at £100 per application.

LEGAL IMPLICATIONS

The Business & Planning Act 2020 will detail the application, determination and enforcement / revocation process and will assist officers when considering applications and licences. Each application will be considered on its merits by officers who will have due regard to the legislation and any supporting guidance.

The implementation and operation of the new regime will be done in accordance with the governments inclusive mobility regulations which addresses community impact and the requirements of members of the public with additional needs.

RISK ASSESSMENT

The risks associated with the pavement licence regime are mitigated by the administration and enforcement provisions of The Business & Planning Act 2020 and associated guidance.

COUNCIL PLAN POLICY PRINCIPLES AND PRIORITIES

Through the maintenance of the proposed pavement licence regimes there will be opportunities to further improve economic prosperity for business during this time of social distancing. The administration and enforcement provisions within the Act assist officers in dealing with problem premises and can lead to the revocation of a licence.

CORPORATE PARENTING IMPLICATIONS

None.

CONSULTATION INCLUDING WARD/COUNCILLORS

The Cabinet Member for Access, Communities and Community Safety has been consulted.

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Education related? No

Background Papers

<https://www.gov.uk/government/publications/inclusive-mobility>

<https://www.gov.uk/government/publications/pavement-licences-draft-guidance/draft-guidance-pavement-licences-outdoor-seating-proposal>

Ward(s) and Ward Councillors:

Not applicable – does not relate directly to specific wards.

Property

Not applicable.