

LICENSING COMMITTEE

BUSINESS AND PLANNING ACT 2020

Extension to Pavement Licence Provisions

7 September 2023

Report of Licensing Manager

PURPOSE OF THE REPORT

To seek approval for the extension to existing administration and enforcement provisions contained within Part 1 of the Business and Planning Act 2020 in respect of Pavement Licences.

RECOMMENDATIONS

1. Retain the existing fee of £100 that is set for the grant of a pavement licence for a further 12 months until 30th September 2024.
2. That where a pavement licence is granted it shall normally be granted for a period up to and including 30 September 2024 or a lesser period (not less than 3 months) as directed by the applicant or upon determination by the Local Authority
3. That the policy and associated appendices (1-4) attached at Appendix A be extended for a further year to 30th September 2024.

1.0 Introduction

1.1 On 22 July 2020 the Business and Planning Act 2020 came into force.

1.2 Part 1 of the Act deals with the consumption and sale of food and drink outdoors and relates to two licensing issues.

- The introduction of Pavement licences
- The modification of premises licences to authorise off sales of alcohol for a limited period.

1.3 Historically the Council has dealt with the Licensing of Street/ Pavement cafes utilising the provisions contained within the Highways Act 1980. In effect the licensing of such areas is the Council giving its approval for the applicant to use the part of the highway as indicated by the licensee in his/her application. The Highways Act 1980 street café

licences remain in place for 1 year, cost £190 and are subject to a set of standard licensing conditions. The licensing conditions are generally concerned with:

- Protecting public safety
- Preventing public nuisance
- Ensuring access for public utility providers when needed
- Promoting the appearance of the area (quality/ type of furniture etc)

The Highways Act 1980 licence makes provision for licences to be revoked where problems are identified. The provisions of the Highways Act 1980 street café licences remain in statute and therefore any licences issued under these provisions remain valid.

- 1.4 The Business and Planning Act 2020 (the “Act”) introduced a “Pavement Licence” for the licence holder to put removeable furniture on part of the highway **adjacent** to the premises to sell / serve food and/or drink and also allows people to consume food and or drink supplied from or in connection with the premises. In effect this allows the area to be used as an extended seating area to the premises or to be a stall from which food/ drink is sold/ served. The licence can be applied to any premises which sells food and/or drink for consumption on or off the premises and is not restricted to those premises where alcohol is sold. For example, it can be used by a café to set up an ice cream stall outside,) or it can be used to facilitate what we traditionally regard as a street café.
- 1.5 The Business and Planning Act 2020 also introduced provisions for the automatic modification of premises licences (issued under licensing Act 2003) to authorise the “off-sale” of alcohol for a limited period. The period currently ends on 30 September 2023. The Act does include measures to exclude certain premises that are currently specifically excluded from selling “off sales” and also makes it clear that those off sales are only permitted during the hours that the premises is licensed for on sales. There are also provisions within the Act regarding proposals to review licences in respect of off sales that have proved problematic.
- 1.6 The above two provisions were introduced as a temporary measure up to and including 30 September 2023 only in order to facilitate the operation of business within the restrictions / guidance in place at the time regarding the COVID- 19 pandemic. The pavement licence provision provides a fast-track application procedure detailing a 7 days consultation period and a subsequent maximum 7 day period in which those applications must be determined, failure to do so results in licences being granted by default.
- 1.7 The Business and Planning Act 2020 (Pavement Licences) (Coronavirus) (Amendment) Regulations 2023 has come into force extending pavement licence renewal dates to 30th September 2024.

Under the Business and Planning Act 2020 (2020 Act), a pavement licence may specify an expiry date, which may not be later than the date specified in section 4(2)(b). If a pavement licence does not specify an expiry date, the licence expires on the date specified in section 4(1)(b). If a pavement licence is deemed to be granted under section 3(9) (where the local authority has failed to determine an application), that pavement licence expires after a year, or if earlier on the date specified in section 4(4).

Prior to these Regulations, the date specified in each of those subsections is 30th September 2023. Regulation 5 extends the dates by twelve months, to 30th September 2024.

Regulation 5 only applies to a pavement licence for which application is made on or after the date these Regulations come into force.

These Regulations extend to England and Wales.

Regulation 6 extends the expiry of sections 1-9 of the 2020 Act generally, also to 30th September 2024.

2.0 Background information regarding Pavement Licences

2.1 The Act details the following:

- Applications must be made in writing to the Local Authority
- Applications must be accompanied by a fee of not more than £100 as the local authority may require.
- Applications must contain specific information; these are not detailed in this briefing paper but replicate the information currently required by the Council in respect of Highways Act licence applications.
- The local authority has to publish the application and publicise the 7-day consultation period.
- The applicant must place a notice at the premises advising of the application, the details of the notice requirements are not provided in this report but largely replicate the Licensing Act public notice requirements. The notice must stay in place until the end of the consultation period.
- The local authority must consult the highways authority and any other persons it considers appropriate regarding the application.
- The local authority must consider any representations made during the consultation period.
- The local authority has 7 days following the close of consultation to determine the application, failure to do so means that the licence is granted by default.
- The local authority can grant or refuse the licence in respect of any or all of the purposes and or in respect of some or all of the highway area.
- The licence if granted, cannot be for a period of less than 3 months and can be up to and including 30 September 2023 (extended to 2024)
- The licence will be subject to default mandatory conditions in respect of provisions of no smoking areas and access for mobility impaired and can be subject to reasonable conditions imposed by the local authority
- Pavement licences do not currently repeal the provisions of the Highways Act Licences, as such existing highways licences remain in place and valid.
- There are several provisions detailed in the Act in respect of enforcement powers, these include the facility to revoke the licence in respect of public health or safety concerns, anti-social behaviour, public nuisance or obstruction of the highway.
- The Act details that a pavement licence constitutes deemed planning permission.

3.0 Recommendations

- 3.1 Members are asked to amend the Council's existing Pavement Licence policy to extend the period in which such licences and conditions associated with them are extended for a further 12 months until 30th September 2024.
- 3.2 The policy outlining the Councils processes and procedures has been updated to reflect the amendments in respect of applications for Pavement licences. **Appendix 1.**

CONCLUSION OF IMPACT ASSESSMENT

(including Diversity, Human Rights, Community Safety, Sustainability and Rural Proofing)

The Business and Planning Act 2020 introduced Pavement Licence provisions to assist businesses recover post-pandemic. The provisions will be extended further until the legislation is passed.

FINANCIAL IMPLICATIONS

The current fee for a Highways Act Street café licence is set at £190, this fee has been set at a level of cost recovery. The Pavement Licence administrative process will largely replicate that of the Highways Act Street café licence process. the maximum fee that can currently be charged by the Council for a Pavement licence is £100.

The administrative work involved in processing the application is similar to that associated with Highways Act Street Café licences, with the additional administrative burden of a requirement to determine applications within 7 days of the close of consultation.

LEGAL IMPLICATIONS

These are outlined in the report and there are no further comments to add.

SECTION 151 OFFICER'S COMMENTS

None

MONITORING OFFICER COMMENTS

The Monitoring Officer has been consulted and has no further comments to make.

BACKGROUND PAPERS

None

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