

# Public Document Pack

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Ask for Christine Lewis  
Email



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Dear Sir/Madam

## **REGULATORY AND LICENSING COMMITTEE SUPPLEMENT**

Please find attached supplement papers for Regulatory and Licensing Committee on **THURSDAY, 30TH JULY, 2020 at 6.00 PM**

Yours faithfully

A handwritten signature in dark ink, appearing to read 'Christie Tims', is written over a light grey rectangular background.

Christie Tims  
**Head of Governance and Performance**

## **SUPPLEMENT**

3. Business & Planning Act 2020

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## BUSINESS & PLANNING ACT 2020

Councillor Angela Lax

Date: 30<sup>th</sup> July 2020

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Key Decision? **YES NO (delete as appropriate)**

Local Ward Members If any Wards are particularly affected insert the name of the Ward Members and their Ward. Ensure that the Ward Members have been consulted.



## Regulatory & Licensing Committee

### 1. Executive Summary

- 1.1 This report advises members of the provisions of the Business and Planning Act 2020 regarding pavement licences and seeks authorisation for the delegation of all the functions, powers and duties of the Council set out in the Business and Planning Act 2020 in respect of pavement licences to the Head of Regulatory Services, Housing and Wellbeing.

### 2. Recommendations

- 2.1 That all functions, powers and duties contained in the Business and Planning Act 2020 in respect of pavement licences be delegated to the Head of Regulatory Services, Housing & Wellbeing.
- 2.2 That members agree to waive the maximum fee of £100 in order to support local businesses at this difficult time.
- 2.3 That members agree that where action is required against premises not complying with conditions, action will be taken to cover costs.
- 2.4 That the Head of Regulatory Services, Housing & Wellbeing, in consultation with the Chairman of Licensing is authorised to make any further changes to the conditions as required.

### 3. Background

- 3.1 The Business and Planning Act 2020 ("the Act") came into force on 22 July 2020. The purpose of the pavement licence provisions in the Act make it easier for premises in England which serve food and drink such as bars, restaurants and pubs to seat and serve customers outdoors through temporary changes to planning procedures and alcohol licensing.
- 3.2 This is a streamlined process to allow businesses to secure these licences in time for the summer and, where they are deemed to have been granted, allow these licences to remain in place for a year but not beyond 30 September 2021. 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. Alcohol licensing changes will allow operators to serve alcohol for consumption off the premises.
- 3.3 A pavement licence is a licence granted by the local authority, or deemed to have been granted, which allows the licence-holder to place removable furniture over certain highways adjacent to the premises in relation to which the application was made, for certain purposes.

- 3.4 Any person who uses or proposes to use premises as a public house, wine bar or other drinking establishment or uses or proposes to use premises for the sale of food or drink for consumption on or off the premises can apply to the Council for a pavement licence. Businesses that are eligible include: public houses, cafes, bars, restaurants, snack bars, coffee shops, and ice cream parlours including where such uses form an ancillary aspect of another use, for example supermarkets, or entertainment venues which sell food and drink.
- 3.5 An application for a pavement licence must be published and is subject to public consultation for a period for 7 days. Before the Council determines the application, it must take into account any representations made and must consult with the Highway Authority and any other person it considers appropriate. The council has identified appropriate additional consultees as the police, planning, environmental health and ward councillors.
- 3.6 After the end of the consultation period the Council may either grant the licence or reject the application. A pavement licence may be granted for such a period of time as the Council may specify in the licence, with a minimum period of 3 months. If the licence does not specify a time period then the licence will expire at the end of 30<sup>th</sup> September 2021. Where a pavement licence is granted, clear access routes on the highway will need to be maintained, taking into account the needs of all users, including disabled people.
- 3.7 Importantly, if the Council does not grant the licence or reject the application within 7 days after the end of the public consultation period the licence is deemed to be granted. Because of this short time period it is necessary that the power to determine applications for pavement licences is delegated by the Committee to the Head of Regulatory Service, Housing & Wellbeing.
- 3.8 There is no legal right of appeal. The Guidance suggests that councils may wish to consider the scope for an internal review process, for example permitting appeals to their licensing committees. However, as there is no statutory right of appeal, it is beyond the powers of a local authority to reject an application and then to overturn its own refusal on an internal review. Also, the compressed timescale of 7 days provided for in the Act is arguably insufficient for an effective internal review of a minded to refuse decision.
- 3.9 A licence may be granted subject to conditions, either imposed by the Act, by the Secretary of State or by the Council. The 2020 Act sets out two conditions which apply to pavement licences which are granted or deemed to be granted these are: a no-obstruction condition and a smoke-free seating condition. These apply only to licences granted under the Business and Planning Act 2020, not existing licences permitted under Part 7A of the Highways Act 1980, or other relevant legislation.
- 3.10 A copy of the draft conditions are attached at Appendix A+. These include national conditions and reflect conditions required by Staffordshire County Council as the highways authority.
- 3.11 If, following the grant of a licence, the Council considers that the holder has breached any conditions of the licence the Council may revoke the licence, or serve a notice on the licence holder requiring steps to be taken to remedy the breach of condition. 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. Members may want to consider this for premises not complying with conditions.
- 3.12 The Council may also revoke a pavement licence if:
- some or all of the part of the highway to which the licence relates has become unsuitable for any purpose for which the licence was granted, or
  - as a result of the licence being granted there is a risk to public health or safety, or
  - anti-social behaviour or public nuisance is being caused or risks being caused, or

- the highway is being obstructed (other than by anything done by the licence holder pursuant to the licence), or
- anything material stated by the licence holder in their application was false or misleading, or
- the licence holder did not post a notice about the application on the premises.

3.13 It is recommended that the power to revoke pavement licences and serve notices under the Act be delegated to the Head of Regulatory Service, Housing & Wellbeing.

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|--|--|
| Alternative Options                                | 1. The Committee could decide not to delegate powers in relation to pavement licensing. This is not recommended given the tight timescales for the processing of licence applications and deemed approvals in the event of failure to determine on time. The Council's licensing team, within the remit of the Head of Regulatory Service, Housing & Wellbeing, has the expertise to process and determine these applications. |
| Consultation                                       | 1. Consultation about the licence conditions has taken place with other local authorities, Staffordshire county council (highways) the police, environmental health and planning.  |
| Financial Implications                             | 1. The Council can charge a fee of up to £100 per pavement licence application. This is unlikely to cover the full cost of processing applications and ensuring compliance. However in order to support local businesses it is proposed to waive the fee, although this will mean a budget pressure. Budgetary provision may have to be made depending on the number of applications received.                                 |
| Contribution to the Delivery of the Strategic Plan | 1. The issuing of pavement licences supports the priority to develop prosperity by encouraging economic growth.  |
| Equality, Diversity and Human Rights Implications  | 1. Authorities must have regard to the needs of disabled people when considering whether to grant a pavement licence and non-smoking areas need to be provided by businesses that are granted pavement licences.   |
| Crime & Safety Issues                              | 1. Off sales are limited to 11pm at the latest in order to reduce the potential for anti-social behaviour. The conditions also make the licence holder responsible for the conduct of people within the area of the Pavement Licence, allowing rowdy or unruly behaviour may lead to the revocation of the licence.  |
| Environmental Impact                               | 1. Pavement cafes have potential to enhance the local built environment. There are conditions attached to the licence to mitigate any negative impact from litter and food and drink spillages.  |
| GDPR/Privacy Impact Assessment                     | 1. The privacy notice will set out what the application needs to know in respect of data protection.   |

|   | Risk Description                                | How We Manage It   | Severity of Risk (RYG) |
|---|---|--|------------------------|
| A | Premises proceed without applying for a licence | Giving advice & information to local businesses & promoting on the council's website | Green                  |

|   |   |   |        |
|---|---|---|--------|
| B | Premises not following the conditions       | Checking compliance & taking appropriate action | Yellow |
| C | Managing business and customer expectations | Clear guidance and conditions                   | Green  |
| D |   |   |        |
| E |   |   |        |

## Background documents

Conditions

## Relevant web links

[www.legislation.gov.uk/ukpga/2020/16/enacted](http://www.legislation.gov.uk/ukpga/2020/16/enacted)

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

[www.gov.uk/government/publications/inclusive-mobility/inclusive-mobility](http://www.gov.uk/government/publications/inclusive-mobility/inclusive-mobility)

## BUSINESS AND PLANNING ACT 2020

A pavement licence permits the business to use furniture placed on the highway to sell or serve food or drink and/or allow it to be used by people for consumption of food and drink supplied from, or in connection with the use of the premises. The pavement licence is non-transferable.

The pavement licence does not give or imply any permission to supply alcohol. Such entitlements are still be covered by licensing requirements.

Any breach of a condition imposed on the Pavement Licence may result in Lichfield District Council issuing a notice requiring the breach to be remedied or revoking the Licence.

### NATIONAL CONDITIONS (APPLICABLE TO ALL PAVEMENT LICENCES)

**“no-obstruction condition”** anything done by the licence-holder pursuant to the holder, or any activity of other persons which is enabled by the licence, must not have one of the specified statutory effects debarring grant of the licence, namely the effect of:

- (a) preventing traffic, other than vehicular traffic, from -
  - (i) entering the relevant highway at a place where such traffic could otherwise enter it (ignoring any pedestrian planning order or traffic order made in relation to the highway),
  - (ii) passing along the relevant highway, or
  - (iii) having normal access to premises adjoining the relevant highway,
- (b) preventing any use of vehicles which is permitted by a pedestrian planning order or which is not prohibited by a traffic order,
- (c) preventing statutory undertakers having access to any apparatus of theirs under, in, on or over the highway, or
- (d) preventing the operator of an electronic communications code network having access to any electronic communications apparatus kept installed for the purposes of that network under, in, on or over the highway.

**“smoke-free seating condition”** where the furniture to be put on the relevant highway consists of seating for use by persons for the purpose of consuming food or drink, the licence-holder must make reasonable provision for seating where smoking is not permitted. Licence holders should provide a minimum 2M distance between non-smoking and smoking areas, wherever possible.

## PAVEMENT LICENCE STANDARD CONDITIONS

1. The licence holder is responsible for complying with all requirements of the government's response to the COVID-19 pandemic at all times whilst licensed, including actively managing any queues to the premises and ensuring social distancing is observed.
2. The licence holder is responsible for the conduct of people within the area of the Pavement Licence, allowing rowdy or unruly behaviour may lead to the revocation of the licence.
3. The location of the pavement licence must not hinder passage by the emergency services, or hinder access to, or the way out from the premise, or to any adjacent premises, including fire evacuation routes. All emergency exits and routes from buildings must be kept clear.
4. The location of the pavement licence must be within the limits of the front or side elevations of the premises applying for the licence. However, where there is a suitable area belonging to premises adjacent to the premises applying for the licence, this area can be considered with the agreement of the owner of the adjacent premises.
5. A pavement licence should have a clear width of 2000 mm which allows two wheelchairs to pass one another comfortably, this should be regarded as the minimum under normal circumstances. Where this is not possible because of physical constraints, 1500mm should be regarded as the minimum acceptable under most circumstances giving sufficient space for a wheelchair user and a walker to pass one another. [www.gov.uk/government/publications/inclusive-mobility/inclusive-mobility](http://www.gov.uk/government/publications/inclusive-mobility/inclusive-mobility)
6. The permitted area must be clearly identifiable and all furniture may only be positioned in accordance with the plan attached to this licence. Any Street Furniture placed within the permitted area of the Pavement Licence must not obscure sight lines for any highway user.
7. All furniture connected with any pavement licence, including umbrellas, must be securely fastened and made of a such substance to ensure that they are not liable to be moved by external forces, such as wind. Where possible any furniture should be non reflective.
8. A barrier may be required to separate furniture from the rest of the footway where this is needed to assist the visually impaired to navigate around the furniture:
  - a. Where a barrier forms part of the permitted furniture it must be more than 800mm high and incorporating a tapping rail (for long cane users) of not more than 100mm above the ground. Barriers must not be permanently fixed to the ground and must be designed to resist collapse or movement (e.g. by being blown over or accidentally



stumbled into). The specification of barriers must be approved by the Council.

9. No barbecues, fire pits or naked flames are permitted in the licensed area.
10. No amplified music or sports commentary will be allowed in the licensed area without the authorisation of the Council.
11. The Licence holder must ensure that the area permitted by the Pavement Licence is maintained in a clean and tidy condition and they must take all necessary precautions to prevent the highway from becoming littered as a result of their trading activities. The area occupied by the Pavement Licence must be washed down thoroughly at the end of every day using a method sufficient to remove food debris and grease, including staining from food and drink spillages.
12. The licence holder must obtain and maintain public liability insurance in the amount of £5 million in respect of any one incident, and indemnify the District Council against all actions, proceedings, claims, demands and liability arising from the licence holder's use of the highway for the licensed purpose.
13. The licence holder must remove all furniture connected with the pavement licence from the licensed area:-
  - a) Outside the permitted hours stated on the licence
  - b) Immediately, if required by reasonable request at any time by an officer of the Council or Emergency Services
  - c) As necessary to permit works in, or the use of the highway by the Council, the highway authority, Emergency Services, and any utilities? or service providers?
  - d) Any other reasonable cause.
14. All furniture and fittings must be regularly cleaned and sanitised in accordance with Covid-19 guidance and maintained in a good state of repair.
15. The Pavement Licence must only be used during the days and hours stated.
16. If the licence is revoked all equipment must be removed with immediate effect and the licence holder must leave the highway in a clean, tidy and undamaged condition. If any action is required by the local authority to remove the equipment or repair any damage to the highway, steps will be taken to recover all associated costs from the licensee.

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