

BUSINESS & PLANNING ACT 2020

Councillor Angela Lax

Date: 30th July 2020

Contact Officer: Susan Bamford/Sarah Gear

Tel Number: 01543 308170/308138

Email: Susan.bamford@lichfielddc.gov.uk

Sarah.gear@lichfielddc.gov.uk

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 30th 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.

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

<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