

Committee: Full Council

Date: Tuesday, 16
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Title: Pavement Licensing – New Provisions

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Lead Member: Councillor Alex Armstrong,
Chair of the Licensing and Environmental Health Committee

Summary

1. The Business and Planning Act 2020 introduced temporary measures for a streamlined process for the issuing of Pavement Licences to businesses during the Covid pandemic.
2. A Pavement Licence 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. The Levelling Up and Regeneration Act 2023 has made permanent the key provisions set out in the BPA Act and in March 2024 introduced new changes, which in some cases has given local determinations to Local Authorities.
4. This report outlines the new changes and proposes recommendations for Members to approve.

Recommendations

5. That Full Council approves the proposed fee set out in paragraph 13 of the report.
6. That Full Council approve and authorise the Head of Legal to make the amendments to the Constitution set out in paragraph 18 of the report.

Financial Implications

7. There was previously a maximum fee cap of £100 for a one year licence. The maximum fee cap is now £500 for first time applications and £350 for renewal applications, though licences can now have a two year duration. Fees must be calculated on a cost recovery basis.

Background Papers

8. A- Government Guidance for Pavement Licences [Pavement licences: guidance - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/pavement-licences)

B- Business and Planning & Act 2020 [Business and Planning Act 2020 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2020/22)

C- Levelling Up and Regeneration Act 2023 [Levelling-up and Regeneration Act 2023 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2023/1)

Impact

9.

Communication/Consultation	N/A
Community Safety	<p>The following community safety considerations are relevant:</p> <p>Public health and safety including security reasonable crowd management measures needed as a result of a licence being granted.</p> <p>Public amenity considerations as to whether the proposed use is likely to create nuisance to neighbouring occupiers by generating anti-social behaviour, and litter;</p> <p>Accessibility – taking a proportionate approach to considering the nature of the site in relation to which the application for a licence is made, its surroundings, and its users.</p>
Equalities	<p>S.149 of the Equality Act 2010 places a duty on local authorities to have due regard to the need to eliminate unlawful discrimination, to advance equality of opportunity between people who share a protected characteristic and to encourage good relations between those who share a protected characteristic and those who do not. The Council has had due regard to this duty when setting the fees and specifying the conditions which should be attached to the pavement licence.</p> <p>When determining applications, the licensing authority will give due regard to the public and highway safety of other highway users in line with all the criteria it will take into account in determining whether or not an application should or should not be granted. The statutory conditions also take account of the needs</p>

	<p>of persons with mobility and visual impairments.</p>
<p>Health and Safety</p>	<p>Public safety will be considered in setting local conditions and determining applications.</p>
<p>Human Rights/Legal Implications</p>	<p>In addition to the legal implications contained within the body of this report, the report seeks to ensure that good governance arrangements are in place in relation to the variation in the Business and Planning Act 2020 enabling the Council to fulfil its statutory requirements.</p> <p>When determining pavement licence applications, the Council must have regard to the Guidance issued by the Secretary of State.</p> <p>Paragraph 2.1 of the Guidance states that to help support local businesses and give them more certainty, the expectation is that local authorities are pragmatic and will grant licences for the maximum period of 2 years, unless there are good reasons for granting a licence for a shorter period such as plans for future changes in use of road space.</p> <p>The Council will need to consider a number of factors, when determining whether to approve a pavement application. These include whether local conditions might be needed to make it possible to approve an application which would otherwise be unacceptable.</p> <p>When setting local conditions and determining applications, the Council will also want to consider the following factors:</p> <ul style="list-style-type: none"> - public health and safety including security – for example, any reasonable crowd management measures needed as a result of a licence being granted; public amenity – will the proposed use create nuisance to neighbouring occupiers by generating anti-social behaviour, and litter; - accessibility – taking a proportionate approach to considering the nature of the

	<p>site in relation to which the application for a licence is made, its surroundings, and its users, taking account of: - considerations under the no-obstruction condition including the cumulative impact of multiple pavement licences in close proximity, in particular considering the needs of disabled people and any other temporary measures in place that may be relevant to the proposal, for example, the reallocation of road space. This could include pedestrianised streets and any subsequent reallocation of this space to vehicles;</p> <p>- whether there are other permanent street furniture or fixed structures in place on the footway that already reduce access; and</p> <p>- other users of the space, for example if there are high levels of pedestrian or cycle movements.</p> <p>There is no statutory right of appeal in relation to the Council's decision in relation to a pavement licence application.</p>
Sustainability	N/A
Ward-specific impacts	N/A
Workforce/Workplace	N/A

Situation

10. The original Pavement Licensing provisions were introduced by the Business and Planning Act 2020 and was designed to support local businesses and help with economic recovery during the easing of restrictions put in place due to the Covid pandemic. This was initially a temporary measure due to end in September 2021, but was subsequently extended to September 2022, 2023 and 2024.
11. The Levelling Up and Regeneration Act 2023 makes permanent the pavement licensing regime under the Business and Planning Act 2020, with a number of changes. The main changes are listed below-
 - A maximum fee cap of £500 for first time applications and £350 for renewal applications. This was previously capped at £100.
 - The licence duration can be up to a maximum of two years. This was previously one year.
 - The consultation and determination periods are now 14 days for each. Previously both were 7 day consultation periods.

- New enforcement powers granted to Local Authorities. From the commencement date, Local Authorities will, with the consent of the licence-holder, be able to amend the licence in certain circumstances.
12. Members are advised that the Guidance – attached as Appendix A – recommends that licences are generally issued for the full two year period.
 13. On the basis of a two year licence duration, and following calculations by Officers ensuring that costs are fully recovered, it is proposed that the fee for both the grant and renewal of a Pavement Licence shall be £287.
 14. There are two national conditions applicable to all Pavement Licences: a no-obstruction condition and a smoke-free seating condition. When determining an application the Authority can set local conditions applicable to the specific licence, and with mind to the no-obstruction condition it is expected that consideration to the needs of disabled people is factored in to the issue of any licence. A minimum width of 2000mm of clear space should be provided between an obstacle and the edge of the footway. However, if this is not feasible due to physical constraints, then a minimum width of 1500mm could be regarded as the minimum acceptable distance.
 15. The new enforcement powers allows the Local Authority to give written notice requiring a business which does not hold a Pavement Licence to remove furniture from the highway within a specified time frame and to refrain from placing any further furniture without a licence. Violation of that notice would allow the Licensing Authority to remove and store the furniture, recover the costs from the business for the removal and storage of the furniture and refuse to return the furniture until those costs have been paid. If the costs are not paid within three months of the notice, the Licensing Authority can dispose of the furniture by sale or other means and retain the proceeds.
 16. There is no statutory appeal process for these decisions.
 17. These changes do not affect existing licences issued under the Business and Planning Act 2020, of which there are 15 in the District. Upon expiry of the existing licence, they will simply be required to apply as a renewal under the new procedure.
 18. With the variation in the Business and Planning Act 2020 to make the management of Pavement Licences a permanent feature, it is appropriate to permanently amend the Council's Constitution to explicitly incorporate this in the functions of the Licensing and Environmental Health Committee.

Within part 3 Responsibility for the Council Functions under the section Committee- Licensing and Environmental Health Committee add:

“22. Pavement Licences under the Business and Planning Act 2020.”

Within part 3 Responsibility for the Council Functions under the section 4 Scheme of Delegation of Council Functions – Licensing and Environmental Health Committee add:

“1.17 Pavement Licences under the Business and Planning Act 2020”

19. This report was presented to the Licensing & Environmental Health Committee at its meeting of Tuesday 18 June 2024, where it was resolved to refer the approval of the recommendations set out in the report to Full Council.

Risk Analysis

20.

Risk	Likelihood	Impact	Mitigating actions
1 –	1-		

1 = Little or no risk or impact

2 = Some risk or impact – action may be necessary.

3 = Significant risk or impact – action required

4 = Near certainty of risk occurring, catastrophic effect or failure of project.