

Non-Statutory Licensing Committee

9 September 2020

Time 10.05 am **Public Meeting?** YES **Type of meeting** Licensing
Venue Online Meeting

Membership

Chair Cllr Alan Bolshaw (Lab)
Vice-chair Cllr Obaida Ahmed (Lab)

Labour

Cllr Greg Brackenridge
Cllr Keith Inston
Cllr Rita Potter
Cllr Milkinderpal Jaspal
Cllr Asha Mattu
Cllr Anwen Muston
Cllr Zee Russell

Conservative

Cllr Jonathan Crofts

Quorum for this meeting is three Councillors.

Information for the Public

If you have any queries about this meeting, please contact the Democratic Services team:

Contact Donna Cope, Democratic Services Officer
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Some items are discussed in private because of their confidential or commercial nature. These reports are not available to the public.

Agenda

Part 1 – items open to the press and public

<i>Item No.</i>	<i>Title</i>
1	Apologies for absence
2	Declarations of interest
3	Minutes of previous meeting (Pages 1 - 4)
4	Matters arising
5	Minutes - 22 July 2020 - Non-Statutory Licensing Sub-Committee (Pages 5 - 10)
6	Statutory Taxi & Private Hire Vehicle Standards (Pages 11 - 18)
7	Pavement Licences Update (Pages 19 - 36)

<p>CITY OF WOLVERHAMPTON COUNCIL</p>	<p>Non-Statutory Licensing Committee Minutes - 8 July 2020</p>
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Attendance

Members of the Non-Statutory Licensing Committee

Cllr Alan Bolshaw (Chair)
Cllr Greg Brackenridge
Cllr Keith Inston
Cllr Rita Potter
Cllr Anwen Muston
Cllr Jonathan Crofts
Cllr Zee Russell

Employees

Donna Cope	Democratic Services Officer
Sarah Hardwick	Senior Solicitor
Jaswinder Kaur	Democratic Services Manager
Chris Howell	Commercial Regulation Manager
Greg Bickerdike	Section Leader Licensing
Lorraine Jones	Section Leader Licensing
Alison Stephens	Senior Food and Consumer Safety Officer

Part 1 – items open to the press and public

Item No. *Title*

- 1 **Apologies for absence**
Apologies were received from Councillor Milkinderpal Jaspal and Councillor Obaida Ahmed.

- 2 **Declarations of interest**
There were no declarations of interest.

- 3 **Minutes of previous meeting**
Resolved:
That the minutes of the meeting of the Non-Statutory Licensing Committee held on 27 May 2020 be confirmed as a true record and signed by the Chair.

4 **Matters arising**

There were no matters arising.

5 **Pavement Licences**

Greg Bickerdike, Section Leader Licensing, presented a report on the Pavement Licence Regime, introduced by The Business and Planning Act 2020.

He stated that since the report was written, advice had been received from legal colleagues that Pavement Licences were an executive function and as such, Recommendation 4 should be noted and read:

4. The delegations referred to in this report includes further proposed delegations from the Director for City Environment.

The Section Leader outlined the regime and explained that it was a temporary measure introduced by The Business and Planning Act 2020 to support businesses in operating safely whilst social distancing was in place.

The Section Leader responded to questions asked and Members of the Committee welcomed the report.

Councillor Inston commended the regime and proposed the recommendations.
Councillor Muston seconded the recommendations.

Resolved:

That Members of the Non-Statutory Licensing Committee:

1. Adopted the Pavement Licence regime;
2. Approved the implementation of the Pavement Licence Policy;
3. Approved the setting of a £25 application fee for a Pavement Licence;
4. Noted that the delegations referred to in the report included further proposed delegations from the Director for City Environment.
5. Noted that the activity regulated by Table and Chairs Permits was regulated by Pavement Licences, with a reduced public consultation period of seven days.

6 **'My Driver Portal' and Online Registers**

Lorraine Jones, Section Leader Licensing, presented a report to inform Councillors of the introduction of the 'My Driver Portal' and Online Register for all drivers, vehicle proprietors and operators licensed by of City of Wolverhampton Council.

She shared a power point presentation outlining the initiatives, but due to technical issues, not all Members were able to view it. She therefore discussed the initiatives verbally and it was agreed that the presentation would be appended to the minutes of the meeting.

The Commercial Regulation Manager responded to questions asked and Members welcomed the report.

Councillor Brackenridge commended Licensing on their work and fully supported the introduction of the 'My Driver Portal' and Online Register.

Councillor Crofts proposed the recommendations and Councillor Russell seconded the recommendations.

Resolved:

That Members of the Non-Statutory Licensing Committee:

1. Noted the introduction of an online 'My Driver Portal' and register for all drivers, vehicle proprietors and operators licensed by of City of Wolverhampton Council.

7 **Sports Ground Safety Advisory Group - Policy for Sports Ground Safety and Molineux Stadium Terms of Reference.**

Chris Howell, Commercial Regulation Manager, presented a report to update the Committee on the new terms of reference and policy document in relation to managing safety at sports grounds.

He outlined the role of the Molineux Stadium Safety Advisory Group and responded to questions asked.

Alison Stephens, Senior Food and Consumer Safety Officer, shared a power point presentation on Sports Ground Safety. She discussed the Sports Ground Safety Certificate and responded to questions asked.

Councillor Greg Brackenridge commended the Molineux Safety Advisory Group for their hard work and proposed the recommendations. Councillor Potter seconded the recommendations.

Resolved:

That Members of the Non-Statutory Licensing Committee:

1. Approved the amended Molineux Stadium Safety Advisory Groups constitution and term of reference.
2. Noted the managing safety at sports grounds policy and that it has been subject to consultation.

The Chair commended Officers on the report and a discussion developed concerning the use of face coverings in licensed vehicles.

Following the discussion, it was agreed that the Chair and Vice Chair of the Non-Statutory Licensing Committee, the Commercial Regulation Manager, and Public Health would agree on and implement a policy regarding the use of face coverings in licensed vehicles. This course of action was agreed unanimously by the Committee.

8 **Exclusion of press and public**

Resolved:

To pass the following resolution:

That, in accordance with Section 100A (4) of the Local Government Act 1972, the press and public be excluded from the meeting for the following items of business, as they involve the likely disclosure of exempt information falling within paragraph 3 of Schedule 12A to the Act relating to the financial or business affairs of any particular person (including the authority holding that information).

- 9 **Surveillance Cameras in Private Hire and Hackney Carriage Vehicles**
Greg Bickerdike, Section Leader Licensing, presented a report informing the Non-Statutory Licensing Committee of the situation relating to the use of surveillance cameras in licensed private hire vehicles and hackney carriage vehicles.

He outlined the proposed consultation exercise and Members welcomed the report.

Resolved:

That Members of the Non-Statutory Licensing Committee:

1. Approved a full public consultation on surveillance cameras in licensed private hire vehicles and hackney carriage vehicles.

At the invitation of the Chair, Colin Parr, Head of Business Services, joined the meeting. He informed the Committee of his impending move to another local authority and thanked Members for their support over the years. The Chair reciprocated on behalf of the Committee.

CITY OF
WOLVERHAMPTON
COUNCIL

Non-Statutory Licensing Sub-Committee

Minutes - 22 July 2020

Attendance

Members of the Non-Statutory Licensing Sub-Committee

Cllr Alan Bolshaw (Chair)
Cllr Jonathan Crofts
Cllr Keith Inston

Employees

Donna Cope
Sarah Hardwick
Elaine Moreton

Democratic Services Officer
Senior Solicitor
Section Leader - Licensing

Part 1 – items open to the press and public

Item No. *Title*

1 Apologies for Absence

There were no apologies for absence.

2 Declarations of interest

There were no declarations of interest.

3 Exclusion of press and public

Resolved:

That, in accordance with section 100A(4) of the Local Government Act 1972, the press and public be excluded from the meeting for the following items of business as they involve the likely disclosure of exempt information falling within paragraph 1 of Schedule 12A to the Act relating to any individual.

4 Application for a Private Hire Vehicle Driver's Licence - MM

The Chair invited Elaine Moreton, Section Leader Licensing, and the Applicant (MM) into the Hearing. MM was accompanied by his Solicitor, Mr Ali. The Chair led introductions and outlined the procedure to be followed.

The Section Leader, Licensing, outlined the report regarding an application for a Private Hire Vehicle Driver's Licence, which had been circulated to all parties in advance of the meeting. The matter had been referred to the Sub-Committee by an authorised employee of the council for further consideration to be given as to whether MM was a fit and proper person to hold a Private Hire Vehicle Driver's Licence due to the information outlined in the report.

All parties were invited to question the Section Leader on the report. Elaine Moreton provided responses to questions asked.

The Chair invited MM to make his submission.

Mr Ali made representations on behalf of his client. He stated that since MM had his Private Hire Vehicle Driver's Licence revoked, he had endeavoured to improve his English language and was currently studying for a foundation degree at university. He stated that the reasons for the revocation had not been upheld and despite his client's request, the circumstances had never been investigated. He stated that MM was not a risk to the public and had all the attributes to be an amazing driver.

All parties were invited to question MM and Mr Ali on the submission.

In response to questions asked, MM summarised the incident that led to the revocation of his licence and stated that he had taken dogs in his vehicle many times before. Following further questions, Mr Ali stated that his client had a phobia of dogs

but assured Members that he had taken dogs many times and would continue to do so.

The Chair invited Mr Ali and MM to make a final statement and Mr Ali did so. He stated that his client was a fit and proper person and the revocation of his licence had been due to a misunderstanding. He stated that his client could communicate to a satisfactory level in English and had never had issues with communication before.

MM, Mr Ali and the Section Leader left the meeting to allow the Sub-Committee to determine the matter.

All parties were invited back to the meeting.

The Chair advised them of the decision of the Sub-Committee, which was explained in full by the Senior Solicitor.

Resolved:

That having considered all the evidence both written and oral, provided at the hearing, the Sub-Committee was not satisfied that MM was a fit and proper person and therefore, in accordance with Section 51 of the Local Government (Miscellaneous Provisions) Act 1976, a Private Hire Vehicle Driver's Licence was not granted. This decision was made in accordance with paragraph 5.1.28(a) and 4.8 of the guidelines relating to the relevance of convictions and breaches of licence conditions agreed by the Licence Committee on 20 March 2019.

The Solicitor detailed the applicant's right of appeal to the Magistrates' Court against the decision of the Sub-Committee, within 21 days of receipt of the decision, and the potential costs of doing so.

5 Application for a Private Hire Vehicle Driver's Licence - MK

The Chair invited Elaine Moreton, Section Leader Licensing, and the Applicant (MK) into the Hearing. The Chair led introductions and outlined the procedure to be followed.

The Section Leader, Licensing, outlined the report regarding an application for a Private Hire Vehicle Driver's Licence, which had been circulated to all parties in advance of the meeting. The matter had been referred to the Sub-Committee by an authorised employee of the council for further consideration to be given as to whether MK was a fit and proper person to hold a Private Hire Vehicle Driver's Licence due to the information outlined in the report.

All parties were invited to question the Section Leader on the report. Elaine Moreton provided responses to questions asked.

The Chair invited MK to make his submission.

MK stated that his offences happened a long time ago when he was young and naive. He stated he had since grown up and was now a trustworthy family man.

All parties were invited to question MK on his submission.

In response to questions asked, MK discussed his current employment and stated that he had not been in trouble with the law for a very long time.

The Chair invited MK to make a final statement. MK did so.

MK and the Section Leader left the meeting to allow the Sub-Committee to determine the matter.

All parties were invited back to the meeting.

The Chair advised them of the decision of the Sub-Committee, which was explained in full by the Senior Solicitor.

Resolved:

That having considered all the evidence both written and oral, provided at the hearing, the Sub-Committee decided to grant MK a Private Hire Vehicle Driver's Licence subject to him undertaking, and there being satisfactory results of, a drugs test with the Council's approved practitioner at his own expense. The Sub-Committee also required MK to undertake a further drugs test in 6 months with the Council's approved practitioner at his own expense, on a date to be arranged.

6 Application for a Private Hire Vehicle Driver's Licence - LW

The Chair invited Elaine Moreton, Section Leader Licensing, and the Applicant (LW) into the Hearing. LW was accompanied by his Representative, Mr Fairclough. The Chair led introductions and outlined the procedure to be followed.

The Section Leader, Licensing, outlined the report regarding an application for a Private Hire Vehicle Driver's Licence, which had been circulated to all parties in advance of the meeting. The matter had been referred to the Sub-Committee by an authorised employee of the council for further consideration to be given as to whether LW was a fit and proper person to hold a Private Hire Vehicle Driver's Licence due to the information outlined in the report.

All parties were invited to question the Section Leader on the report. Elaine Moreton and the Senior Solicitor provided responses to questions asked.

The Chair invited LW to make his submission.

Mr Fairclough made representations on behalf of his client. He discussed the circumstances that led to his client's convictions. He stated LW was now a changed man and urged the Sub-Committee to give him a chance.

All parties were invited to question LW and Mr Fairclough on the submission.

In response to questions asked, LW and Mr Fairclough elaborated further on the situations that lead to LW's convictions and discussed the reasons for his application.

The Chair invited LW and Mr Fairclough to make a final statement. Mr Fairclough did so. He stated that his client had made efforts to turn his life around and had not been in trouble since 2012.

LW, Mr Fairclough and the Section Leader left the meeting to allow the Sub-Committee to determine the matter.

All parties were invited back to the meeting.

The Chair advised them of the decision of the Sub-Committee, which was explained in full by the Senior Solicitor.

Resolved:

That having considered all the evidence both written and oral, provided at the hearing, the Sub-Committee was not satisfied that LW was a fit and proper person and therefore, in accordance with Section 51 of the Local Government (Miscellaneous Provisions) Act 1976, a Private Hire Vehicle Driver's Licence was not granted. This decision was made in accordance with paragraph 5.1.12(b) and 5.1.13(b) of the guidelines relating to the relevance of convictions and breaches of licence conditions agreed by the Licence Committee on 20 March 2019.

The Solicitor detailed the applicant's right of appeal to the Magistrates' Court against the decision of the Sub-Committee, within 21 days of receipt of the decision, and the potential costs of doing so.

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<p>CITY OF WOLVERHAMPTON COUNCIL</p>	<h2>Non-Statutory Licensing Committee</h2> <p>9 September 2020</p>
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Report title	Statutory Taxi & Private Hire Vehicle Standards	
Wards affected	All wards	
Accountable director	Ross Cook, Director of City Environment	
Originating service	Licensing Services	
Accountable employee	Greg Bickerdike	Service Lead – Licensing
	Tel	01902 554030
	Email	Greg.Bickerdike@wolverhampton.gov.uk
Report to be/has been considered by	None.	

Recommendation for decision:

The Non-Statutory Licensing Committee is recommended to:

1. Approve a 12-week public consultation of the proposals to harmonise Licensing Services' policies and procedures with the Department for Transport's Statutory Taxi & Private Hire Vehicle Standards.

Recommendation for noting:

The Non-Statutory Licensing Committee is asked to note:

1. The actions taken by Licensing Services to harmonise Licensing Services' policies and procedures with the Department for Transport's Statutory Taxi & Private Hire Vehicle Standards.

1.0 Purpose

- 1.1 To inform the Non-Statutory Licensing Committee of the recommendations made by the Department for Transport's 'Statutory Taxi & Private Hire Vehicle Standards' with implications for Licensing Services.

2.0 Background

- 2.1 The Department for Transport (DfT) published its 'Statutory Taxi & Private Hire Vehicle Standards' (Standards) on 21 July 2020.
- 2.2 A review of Licensing Services' operation has been completed. Some of the changes have already been implemented, whilst it is proposed that others undergo a full 12-week public consultation to obtain valuable feedback before implementation.

3.0 Increased Frequency of Driver's Disclosure and Barring Service (DBS) Checks

- 3.1 The most significant recommendation in the Standards is that drivers should undergo an enhanced DBS check at least every six months. Currently, drivers are required to undergo an enhanced DBS check every three years, in line with the renewal of their driver licence.
- 3.2 Conducting biannual DBS checks would increase the cost to drivers six-fold, totalling £476.94 over three years.
- 3.3 An alternative solution is requiring drivers to provide proof that they have subscribed to the DBS Update Service, which costs £13 per year. The requirement to evidence their continuous subscription to the update service would need to be a condition of licence.
- 3.4 After applying for a DBS certificate, the driver would subscribe to the service and nominate Licensing Services as an authority that could view the status of their online certificate every day. The DBS then conduct a weekly check for new conviction information. If there is new information, the certificate's status is updated to advise that a new certificate is required.
- 3.5 It is currently a condition of licence that drivers must notify Licensing Services in writing of any convictions. Failure to notify Licensing Services will normally result in a two-month suspension of the licence, in accordance with section 5.1.18 of the Council's 'Guidelines Relating to Relevance of Convictions and Breaches of Licence Conditions'. During this suspension period, the licence holder would be required to apply for a new DBS certificate and provide it to the Council, then undergo a review of their licence.
- 3.6 If the driver does not show their new certificate to Licensing Services within 28 days of receiving it, a copy of the certificate can be requested from the DBS.

- 3.7 If a driver changes their address, the certificate remains valid. If the driver changes their name, they will be required to apply for a new DBS certificate and then link this with their old certificate.
- 3.8 There are circumstances in which individuals are not permitted by the DBS to subscribe to the update service and they should still be subject to an enhanced DBS check every six months. It is proposed that these licence holders are issued short-term driver badges lasting six months, which are extended by six months upon provision of a new DBS certificate.

4.0 Requiring Basic DBS Checks of Vehicle Licence Holders

- 4.1 Most vehicle licence holders are driver licence holders, as the vehicles cannot be driven without a Hackney Carriage or Private Hire Driver Licence.
- 4.2 However, the Standards recommend conducting annual basic DBS checks on all vehicle licence holders. This will have implications for vehicle leasing and accident management companies, who own licensed drivers but do not drive nor undertake licensed work themselves.
- 4.3 It is proposed that vehicle licence holders who do not have a driver licence are required to provide a basic DBS certificate to Licensing Services every 12 months. Where the licence holder is a limited company, all the directors would be required to undergo a basic check every 12 months and if a new director joined, a new basic DBS certificate would need to be provided. This would be included on the vehicle licence conditions.

5.0 Notification of Convictions

- 5.1 The Standards recommend that licence holders should notify Licensing Services within 48 hours of an arrest and release, charge or conviction for sexual, violent, dishonest or motoring offences. The current requirement is 14 days. This could be implemented by varying this condition of licence.

6.0 Duration of Driver Licences

- 6.1 It is recommended by the Standards that driver licences should be issued for three years by default. Short term licences can be issued to licensees who have a time-limited right to work in the UK, but licences should not be issued for one year on a probationary basis, even if a licensee has a history of convictions or complaints.
- 6.2 Any issues should be investigated by Licensing Compliance and resolved by way of a mid-licence review, where appropriate.
- 6.3 A check of the driver's DVLA driving licence would take place each year and the DBS update service checks for convictions every week.

- 6.4 Applicants who are provided with a 'manual' certificate by the DBS and are not eligible for the update service would be granted a three-year licence but would be issued with a driver badge that expires after six months. When a new DBS certificate is provided, another six-month driver badge would be issued free of charge, each time until the licence expires.

7.0 CCTV

- 7.1 An investigation on the proportionality of CCTV, formally known as surveillance cameras, within licensed vehicles is recommended. Licensing Services has provided evidence of the number of crimes in Wolverhampton that involve taxis (302 in 2019) and the Non-Statutory Licensing Committee recently approved a public consultation on their use. This is being redrafted to give regard to the Standards before consultation commences and will be included in the wider consultation.

8.0 Private Hire Operators

- 8.1 The Standards recommend the following conditions of licence:
- A. The requirement for a basic DBS check and the notification of any convictions to the employer should be included in employment contracts for roles with responsibility for taking bookings or dispatching vehicles.
 - B. An 'employing ex-offenders' policy, for roles with responsibility for taking bookings or dispatching vehicles, must be in use and visible to Licensing Services.
 - C. The name of any individual that dispatched a vehicle from the base must be logged with the fare, along with the name of any driver that responded to the booking request (i.e. including those that were unsuccessful in being allocated the fare).
 - D. If a fare is subcontracted, the original operator must be able to show that the contracted operator complies with the above conditions.
 - E. The use of Public Service Vehicle (PSV) driven by a 'Passenger Carrying Vehicle' licensed driver to fulfil a fare, without the informed consent of the booker is prohibited. The booker must be informed that the driver is subject to different checks and not required to have an enhanced DBS check.
- 8.2 Phillip Kolvin Q.C. has also recommended that Private Hire Operators inform Licensing Services of all complaints against drivers.

9.0 Taxi Licensing Policies

- 9.1 It is proposed that the below policies will be collated into a 'Taxi Licensing Policy' on the Council's website, to improve the transparency of Licensing Services:

- A. Right to work in the UK checks
- B. Guidelines Relating to Relevance of Convictions and Breaches of Licence Conditions
- C. Delegations of Authority to Officers
- D. Schedule of Training for Licensing Decision Makers
- E. Driver, Vehicle and Operator Licence Conditions
- F. Vehicle Requirements
- G. Licence Plate Exemption Requirements

10.0 Consultation

10.1 It is proposed that the recommendations outlined in sections 3.0 to 9.0 of this report undergo a 12 week consultation. Consultees will include:

- A. City of Wolverhampton Councillors
- B. The hackney carriage and private hire trade, including all licence holders
- C. The public, as customers of the trade
- D. All other Licensing Authorities, including Transport for London
- E. Department for Transport
- F. West Midlands Police
- G. Transport for West Midlands
- H. West Midlands Licensing Authorities
- I. Wolverhampton's Multi-Agency Safeguarding Hub (MASH)
- J. Pubwatch
- K. Black Country Chamber of Commerce
- L. City of Wolverhampton Council Equalities Team

11.0 Department for Transport Response

11.1 The Department for Transport expects these recommendations to be implemented unless there is a compelling local reason not to. The Council is expected to provide an update of their consideration of the Standards by the end of January 2021. The

department also expects the Council to publish its consideration of the measures contained in the Standards along with the policies and delivery plans that stem from them.

- 11.2 The recommendations detailed in sections 12.0 to 15.0 of this report have been, or will be, implemented without consultation due to their simplicity.

12.0 Safeguarding

- 12.1 Whilst there is already a comprehensive safeguarding module in the driver training programme, the Standards specifically reference two resources, the DfT's 'Together we can tackle child abuse' toolkit and the Home Office's 'County Lines' materials.
- 12.2 Worcestershire County Council, who provide all training to the Council's applicants, have reviewed this documentation and all areas are incorporated into the driver training programme.

13.0 Passenger Complaints

- 13.1 The Standards recommend requiring a sticker within licensed vehicles which displays information on how to complain directly to the Council about the driver, vehicle or operator.
- 13.2 Licensing Services have acquired the telephone number 01902 558294 which can be stylised as '01902 55 TAXI' for a memorable complaints number. This will then be advertised within all licensed vehicles.

14.0 Determination of Licensing Hearings by Officers

- 14.1 The Standards do not recommend that the determination of licence hearings is undertaken by officers. This is to ensure that the investigation of complaints and the review of licences as a result of those complaints is separate.
- 14.2 This is already the case at Wolverhampton, with Licensing Compliance a separate function and no officer having responsibility for investigating and decision making. This recommendation is likely targeted at smaller authorities, who may have just one officer responsible for all taxi licensing and compliance.
- 14.3 Whilst it is not practicable for Councillors to be involved in every licence application or review due to the volume of applicants and licence holders at Wolverhampton, contentious decisions are referred to the Non-Statutory Licensing Sub-Committee.
- 14.4 The documentation of the training undertaken by deciding officers will be consulted on and presented to committee.

15.0 Reporting of Revocations to the DBS and police

- 15.1 When a licence is revoked due to the holder representing a risk to a child or vulnerable adult, this is now reported to the DBS. They will then consider whether the individual should be added to a barred list.
- 15.2 Where a licence is refused or revoked on the grounds of public safety, the police are now informed as a matter of routine.

16.0 Financial implications

- 16.1 There is no cost to undertake a consultation as all consultees can be reached via email or advised of the consultation on the council's online Consultation Hub. The resource of administering the consultation will be met out of existing budgets.

[SB/28082020/I]

17.0 Legal implications

- 17.1 Licensing authorities are under a legal duty, under section 177 of the Police and Crime Act 2017, to have regard to the Standards.

[JB/28082020/A]

18.0 Equalities implications

- 18.1 The Equalities Team will be included as a consultee, to understand any implications of the recommendations.

19.0 Climate change and environmental implications

- 19.1 There are no climate change nor environmental implications arising from the recommendations of this report.

20.0 Human Resources implications

- 20.1 There are no Human Resources implications arising from the recommendations of this report.

21.0 Corporate Landlord implications

- 21.1 There are no Corporate Landlord implications arising from the recommendations of this report.

22.0 COVID-19 implications

- 22.1 There are no COVID-19 implications arising from the recommendations of this report.

23.0 Schedule of background papers

- 23.1 Statutory Taxi & Private Hire Vehicle Standards, Department for Transport, 21 July 2020
- 23.2 Guidelines Relating to Relevance of Convictions and Breaches of Licence Conditions, City of Wolverhampton Council, 20 March 2019

<p>CITY OF WOLVERHAMPTON COUNCIL</p>	<h2>Non-Statutory Licensing Committee</h2> <p>9 September 2020</p>
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Report title	Pavement Licences Update	
Wards affected	All wards	
Accountable director	Ross Cook, Director of City Environment	
Originating service	Licensing Services	
Accountable employee	Greg Bickerdike	Service Lead – Licensing
	Tel	01902 554030
	Email	Greg.Bickerdike@wolverhampton.gov.uk
Report to be/has been considered by	None	

Recommendations for decision:

The Non-Statutory Licensing Committee is recommended to:

1. Approve the revised Pavement Licence Policy and Standard Pavement Licence Conditions.
2. Confirm the delegation of authority to determine applications, review licences and manage the appeal of decisions for Pavement Licences.

1.0 Purpose

- 1.1 To update the Non-Statutory Licensing Committee on the implementation of the Pavement Licence Regime.

2.0 Background

- 2.1 The Committee approved the implementation of the Pavement Licence regime on 8 July 2020. Since then, there have been some minor changes to the regime, but it has been successfully operating.

3.0 Delegation of Authority

- 3.1 Changes to The Business and Planning Bill prior to its enactment meant that the administration of Pavement Licences transferred from being a function of the Executive to a function of the Council. The delegation of authority was approved by the Chair of the Non-Statutory Licensing Committee on 28 July 2020. This approval is attached as Appendix 1. The scheme of delegations is below:

Determination of applications with no representations:

- Licensing Officer, Licensing and Compliance Officer, Licensing Services

Determination of applications with representations or applications non-compliant with policy:

- Senior Licensing and Compliance Officer, Licensing Services
- Section Leader, Licensing Services

Issuing notices of breach of licence conditions, or revoking licences:

- Licensing and Compliance Officer, Licensing Services
- Environmental Health Officer/Senior Environmental Health Officer
- Senior Officer, Environmental Health
- Section Leader, Licensing Services

Review of decisions to refuse grant or revoke licence to:

- Service Lead, Business Services
- Commercial Regulation Manager, Business Services

4.0 Update to Standard Pavement Licence Conditions

- 4.1 Prior to enactment of the legislation, the House of Lords amended The Business and Planning Bill so that licence holders must make reasonable provision for outside seating where smoking is not permitted.
- 4.2 In addition, it has been identified that a licence condition for all customers to be seated would reduce the risk of COVID-19 transmission and anti-social behaviour.

4.3 As a result of this, it is proposed that the following conditions are included on the Standard Pavement Licence Conditions:

- Licence holders must make reasonable provision for outside seating where smoking is not permitted.
- All customers must be seated, with no vertical drinking.

4.4 The updated Pavement Licence Policy, including the proposed Standard Pavement Licence Conditions is attached as Appendix 2.

5.0 Uptake of Pavement Licences

5.1 Five Pavement Licences have been granted to the following premises:

- The Slug And Lettuce, 34 Queen Square, Wolverhampton WV1 1TL
- The George Wallis, 11-15 Victoria Street, Wolverhampton WV1 3NP
- The Royal London, Wulfruna Street, Wolverhampton WV1 1LX
- The Giffard Arms, 64 - 65 Victoria Street, Wolverhampton WV1 3NX
- The Subcontinent, 10 Victoria Street, Wolverhampton WV1 3NP

6.0 Financial implications

6.1 There are no financial implications arising from the recommendations in this report.

[SB/28082020/Y]

7.0 Legal implications

7.1 Pavement Licences are regulated under The Business and Planning Act 2020.

[JB/28082020/B]

8.0 Equalities implications

8.1 There are no equalities implications arising from the recommendations in this report.

9.0 Climate change and environmental implications

9.1 The reduction in space available for smoking will create an area with improved air quality.

10.0 Human Resources implications

10.1 There are no Human Resources implications arising from the recommendations in this report.

11.0 Corporate Landlord implications

- 11.1 There are no Corporate Landlord implications arising from the recommendations in this report.

12.0 COVID-19 implications

- 12.1 The condition requiring customers to be seated in the licensable area, in tandem with the requirement for the location of all seating to be approved, will assist businesses in maintaining social distancing between their customers. Social distancing has been proven to reduce the spread of COVID-19.

13.0 Schedule of background papers

- 13.1 Pavement Licences - Non-Statutory Licensing Committee, 8 July 2020
- 13.2 The Business and Planning Act 2020, 22 July 2020
- 13.3 Guidance: pavement licences (outdoor seating proposal), Ministry of Housing, Communities & Local Government, 22 July 2020

14.0 Appendices

- 14.1 Appendix 1 - Delegation of authority to administer Pavement Licences
- 14.2 Appendix 2 - Pavement Licence Policy

Chris Howell

From: Councillor Alan Bolshaw
Sent: 28 July 2020 15:58
To: Chris Howell
Subject: RE: Pavement Licences

Sensitivity: NOT PROTECTIVELY MARKED

Hi Chris,

Many thanks for the update about this matter.

as Chair of Non-Statutory Licensing Committee, **I am more than happy to delegate authority** to determine applications, review licences and manage the appeal of decisions for Pavement Licences as set out in the original report and note that this issue will come before a full committee in due course.

Regards,

Councillor Alan Bolshaw
Member Of The Council
Tel. Office: REDACTED
Tel. Mobile: REDACTED

[E-mail: Alan.Bolshaw@wolverhampton.gov.uk](mailto:Alan.Bolshaw@wolverhampton.gov.uk)
City of Wolverhampton Council

From: Chris Howell <Chris.Howell@wolverhampton.gov.uk>
Sent: 28 July 2020 15:40
To: Councillor Alan Bolshaw <Alan.Bolshaw@wolverhampton.gov.uk>
Subject: Pavement Licences

Sensitivity: NOT PROTECTIVELY MARKED

Dear Councillor Bolshaw,

You will recall, and the minutes (attached), show that at the Non-Statutory Licensing Committee held on 8 July 2020, Councillor were advised that since the report was written, advice had been received from our legal colleagues that Pavement Licences were an executive function and as such recommendation 4 should be noted and read:

4. The delegations referred to in this report includes further proposed delegations from the Director for City Environment.

As the Business and Planning Bill continued through the path to gain Royal Assent, this position has changed and it is now a Council function. This has the effect that the original recommendation was correct and delegation to determine applications, review licences and manage the appeal of decisions for Pavement Licences is required from Non-Statutory Licensing Committee.

Appendix 1 - Delegation of authority to administer Pavement Licences

A further report will be submitted to a future meeting for confirmation by full committee. However, until that meeting, in your position as Chair of Non-Statutory Licensing Committee, you are requested to Delegate authority to determine applications, review licences and manage the appeal of decisions for Pavement Licences as set out in the original report (attached).

Chris Howell
Commercial Regulation Manager

Tel. Office: **REDACTED**
[E-mail: Chris.Howell@wolverhampton.gov.uk](mailto:Chris.Howell@wolverhampton.gov.uk)
City of Wolverhampton Council

[Environmental Health](#) | [Licensing](#) | [Private Sector Housing](#) | [Trading Standards](#)



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Pavement Licence Policy

9 September 2020

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Introduction

Pavement Licences are a temporary licensing regime introduced by The Business and Planning Act. They allow food and drink businesses the use of public highway adjacent to their premises to improve their customer capacity whilst maintaining social distancing.

Purpose

The Pavement Licence Policy's purpose is to facilitate socially distanced trade for food and drink businesses without compromising the safe and free movement of pedestrians, especially visually impaired and disabled people.

Scope

Relevant highway, or highway, means a highway to which Part 7A of the Highways Act 1980 applies and which is not over Crown land or maintained by Network Rail. The highway includes the carriageway for motor traffic and the pavement or footway for pedestrians.

Placing furniture on the highway without permission of the landowner, in this case the City of Wolverhampton Council Highway Authority, is an offence of, "wilful obstruction of the highway" (s.137 of The Highways Act 1980).

Items placed on private land are not subject to controls under the Highways Act 1980; however, businesses are advised to be mindful of the purpose of this policy and other legislation, such as The Health and Safety at Work etc Act 1974.

Anything that is done by a licence holder pursuant to a Pavement Licence does not need a Highways Act licence; it is deemed to have planning permission; and it is not street trading for the purposes of any of the various statutes regulating that activity.

A Tables and Chairs permit may still be applied for, as the Pavement Licence regime runs parallel, not instead of, the existing regime. Businesses are encouraged to apply for a 'Table and Chairs Licence' when the Pavement Licence regime expires on 30 September 2021.

It must be emphasised that the Council, in granting a Pavement Licence, cannot and does not seek to absolve anyone from any statutory risk which they may incur in placing or depositing any object on the highway.

Who can apply for a Pavement Licence?

Licences are granted to premises that are either:

- (a) used as a public house, wine bar or other drinking establishment;
- and/or
- (b) used for the sale of food or drink for consumption on or off the premises.

What can I do with a Pavement Licence?

The statutory purpose(s) of a Pavement Licence are

(a) to sell or serve food or drink supplied from, or in connection with the relevant use of the premises

and/or

(b) by other persons for the purpose of consuming food or drink supplied from, or in connection with relevant use of the premises.

You can apply to place the following furniture on the highway adjacent to your business:

- (a) counters or stalls for selling or serving food or drink
- (b) tables, counters or shelves on which food or drink can be placed
- (c) chairs, benches or other forms of seating
- (d) umbrellas, barriers, heaters and other articles used in connection with the outdoor consumption of food or drink

This is a comprehensive list; no other types of furniture are licensable by a Pavement Licence.

Application Preparation

If the removal of existing street furniture is required for a business' intended use of the relevant highway, this must be agreed and completed by the Council prior to the application being made.

In exceptional circumstances, permission will be considered for those wishing to anchor enclosures but will be subject to the furniture within being removed at the end of each day.

Applicants will be expected to meet the cost of this work and provide full payment in advance. Requests of this nature should be made via email to licensing@wolverhampton.gov.uk

Application Fees

The fee of £25 is payable on application. This fee was set by the Non-Statutory Licensing Committee on 8 July 2020 and is subject to review. Application fees are non-refundable, including where the application is refused or the licence is surrendered.

The Application Process

Application Form and Notice of Application

All applications must be made via the Council's website.

Consultation

All applications are subject to public consultation. Upon application, a notice will be sent to the email address provided on the application. The applicant must, on the day of application, fix this notice to the premises so that it is readily visible to, and can be read easily by, members of the public who are not on the premises and securely so that the notice remains in place until the end of the public consultation period. The public consultation period is seven days beginning with the day after that on which the application is made. This excludes Christmas Day, Good Friday and bank holidays.

This notice is a statutory requirement. Failure to comply with this requirement will result in the application being rejected and application fees are non-refundable. The notice should be laminated or covered in a way to protect it from the weather.

Determination

Following the conclusion of the public consultation period, a seven-day determination period begins. This excludes Christmas Day, Good Friday and bank holidays. The local authority will also consult with Network Coordination, Traffic & Road Safety and the Disabled Access Team. The Council must take into account any representations made.

If the application is not determined within this period, the licence is deemed to be granted by the authority to the applicant.

Applications will be considered in light of the requirements below. Whilst applications that comply to these requirements will generally be granted, failure to do so does not necessarily mean an application will be refused as each application will be determined on its own merits.

- (a) A plan, detailing the premises, furniture, enclosure, highway and obstructions at a scale of no more than 1:100, should be included with the application. A red line should mark the perimeter of the premises and the area of relevant highway.
- (b) Furniture should not be located on the highway in areas where tactile paving is provided.
- (c) A minimum of 1.5 metres from the furniture placed on the highway to the nearest obstruction and/or carriageway should be available to pedestrians on the pavement. Where the highway is restricted to 1.5 metres between the licensable area and an obstruction, the maximum length of restricted width is six metres.

- (d) The licensable area should not prevent normal access to premises adjoining the relevant highway.
- (e) The licensable area should not prevent statutory undertakers having access to any apparatus of theirs under, in, on or over the highway.
- (f) The licensable area should not prevent 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.
- (g) The licensable area should not prevent any use of vehicles which is licensed by a pedestrian planning order or which is not prohibited by a traffic order.
- (h) The furniture should not cause a visual obstruction likely to cause injury to pedestrians or drivers.
- (i) The licensable area should be enclosed, with an access/egress point at least 1.2 meters wide. These may be constructed with planters.
- (j) The enclosure should be of a solid nature and height between 1.0 – 1.2 metres above ground level and must include a tapping rail. The material used for the enclosure should be lightweight in construction and portable but stable enough to prevent collapse if accidentally walked/stumbled into. Rope barriers should not be used. The material used should offer good colour contrast from the floor. Livery is licensed on the enclosure. However certain types of advertising may require additional planning consent and guidance should be sought via email from Planning@wolverhampton.gov.uk.
- (k) The licensable area and furniture within should not detract from the amenity of the area. Plastic tables or chairs should not be used.
- (l) The licensable area should be immediately adjacent to the premises.
- (m) The hours of operation shall not include 22:00 – 06:00.
- (n) The applicant should have a minimum of £5million Public Liability Insurance for the premises.
- (o) Any other reasonable requirement, particularly where there are challenges due to the location of the premises.

A Pavement Licence may be granted in respect of any or all of the purposes in relation to which the application is made and some or all of the part of the relevant highway specified in the application.

All Pavement Licences granted by City of Wolverhampton Council will expire on 30 September 2021. All Pavement Licences deemed to be granted shall have a duration of one year. A licence will only apply to one premises' location.

Interaction with Alcohol Licensing

A Pavement Licence, in respect of a business which has a current Premises Licence permitting the sale or supply of alcohol under The Licensing Act 2003, authorises off-sales and the consumption of alcohol within the licensable area. Every off-sale must be made at a time when the premises licence permits alcohol to be sold for consumption on the premises. The premises licence is treated as if it has been varied by the Pavement Licence. Licensees who have had an application for an off-

sales permission refused or had their off-sales permission excluded by variation or at review within the last three years, will be excluded from this provision.

If the premises is situated within an area where there is an order prohibiting the consumption of alcohol, signage advertising the prohibition of consuming alcohol outside of the licensable area must be displayed so as to be visible when exiting the licensable area. The licensable area must be supervised at all times. These are standard conditions of licence.

Delegated Authority

Authority is delegated by Non-Statutory Licensing Committee for the following actions:

Determination of applications with no representations:

- Licensing Officer, Licensing and Compliance Officer, Licensing Services
- Section Leader, Licensing Services

Determination of applications with representations or applications non-compliant with policy:

- Licensing Officer, Licensing and Compliance Officer, Licensing Services
- Section Leader, Licensing Services

Issuing notices of breach of licence conditions, or revoking licences:

- Licensing Officer, Licensing and Compliance Officer, Licensing Services
- Section Leader, Licensing Services

Review of decisions to refuse grant or revoke licence to:

- Section Leader, Licensing Services
- Commercial Regulation Manager, Business Services

Licence Condition Compliance

The licence holder may surrender a Pavement Licence at any time by giving written notice to the Council via email to licensing@wolverhampton.gov.uk.

A Pavement Licence does not give permission for the business to use the licensable area for any purpose in the regime, only those granted or deemed to have been granted. If there is a material difference between the way the space is being utilised by the business and the description provided in the application, the activities will be considered unlicensed.

Breaching the conditions of the licence will normally result in the serving of a notice on the licence holder requiring action to remedy the breach within a specified time. If the licence holder fails to remedy the breach within the specified time, the Council

may remedy the breach itself and recover the costs of doing so from the licence holder.

A serious breach, multiple breaches and/or failure to remedy a breach will normally result in revocation of the licence.

The Council may also revoke the licence if:

- some or all of the relevant highway to which the licence relates has become unsuitable for any purpose in relation to which the licence was granted or deemed to be granted;
- as a result of the licence there is a risk to public health or safety;
- as a result of the licence anti-social behaviour or public nuisance is being caused or risks being caused;
- as a result of the licence the highway is being obstructed (other than by anything done by the licence holder pursuant to the licence);
- anything material stated by the licence holder in their application was false or misleading;
- the licence holder did not fix the notice of application as prescribed in legislation.

Decision Appeals

Where an application is refused or a licence is revoked, an explanation will be provided to the applicant. Whilst there is no statutory right of appeal against a refusal to grant a Pavement Licence, a request to review the decision of the officer may be made to the Licensing Section Leader via email to licensing@wolverhampton.gov.uk. The Section Leader, or the Commercial Regulation Manager, can overturn the decision if they believe the deciding officer was wrong i.e. that no reasonable person would have made that decision.

Appendix A - Standard Pavement Licence Conditions

1. Any conditions published by the Secretary of State apply to this licence, including those published after the grant of this licence.
2. The conditions attached to this licence may be varied and added to by the Council at any time.
3. The licensable area must not prevent pedestrians from entering or passing along the highway.
4. A minimum of 1.5 metres from the furniture placed on the highway to the nearest obstruction and/or carriageway must be available to pedestrians on the pavement. Where the highway is restricted to 1.5 metres between the licensable area and an obstruction, the maximum length of restricted width is six metres.
5. The licensable area must not prevent normal access to premises adjoining the relevant highway.
6. The licensable area must not prevent statutory undertakers having access to any apparatus of theirs under, in, on or over the highway.
7. The licensable area must not prevent 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.
8. The licensable area must not prevent any use of vehicles which is licensed by a pedestrian planning order or which is not prohibited by a traffic order.
9. The furniture must not cause a visual obstruction likely to cause injury to pedestrians or drivers.
10. The licence holder must always have a valid public liability insurance policy for at least £5,000,000 covering the licensable area.
11. The licence holder must indemnify the Council against any claim in respect of injury, damage or loss arising out of the grant of the licence except where any claim in respect of such injury damage or loss is attributable to the negligence of the Council.
12. The licence holder must not allow the area to be used for any purpose other than that detailed in the granted licence. The layout of the area as detailed at the time of application must be maintained, unless expressly licensed otherwise in writing by the Council
13. Tables and chairs must be sited so that they are always clearly visible from inside the premises. Alternatively, the licensable area must always be supervised.
14. No music or entertainment is to be provided in the area licensed for tables and chairs.
15. If the premises is licensed to sell alcohol under The Licensing Act 2003 and the premises is situated within an area where there is an order prohibiting the consumption of alcohol, signage advertising the prohibition of consuming alcohol outside of the licensable area must be displayed so as to be visible when exiting the licensable area. The licensable area must be supervised at all times.
16. If the premises is licensed to sell alcohol under The Licensing Act 2003, no alcohol is to be served less than 30 minutes prior to the end of the Pavement Licence's operating hours.

17. All furniture must be cleared away no later than an hour after the Pavement Licence's operating hours.
18. No glassware must be permitted in the licensable area.
19. The licensable area must be kept clean and clear of all debris and litter during the licensed hours. The provision of suitable litter bins or ashtrays must be made available.
20. Any furniture used in the licensable area must be removed at the end of the licensable hours.
21. Any furniture used is safe, including but not limited to:
 - a. all tables and chairs are in good repair and stable;
 - b. any parasol and umbrella are fully secured to prevent them being dislodged;
 - c. the area to be used is defined and protected in the manner prescribed by the Council with regards to material, colour and dimensions.
22. Any damage to Council property caused as a result of the licence holder's activity will be repaired by the Council with all costs recharged to the business in question.
23. The licence holder must ensure adherence to any direction from the Council on livery, advertisements and logos.
24. A copy of the licence must be displayed in a prominent position as near as reasonably possible to the licensed area ideally on the door or window of the premises.
25. The licence holder agrees that the licence may be suspended if the Council is required to make the licensed area available for any event, works, or issues of public safety or any other reason it requires the area for.
26. Any heaters and/or electric lighting must be installed by a competent person and conform to IP65 for outdoor use.
27. The hours of trading must be as determined on the licence.
28. The licence holder must remove all or part of the tables and chairs for an identified period at the request of an authorised officer of the Council or a police constable.
29. All items placed on the highway must be free-standing. No drilling or excavation of the highway must be licensed.
30. The business must assist with any reasonable request, including inspection, from an authorised officer of the Council or police at any time when the business is open.
31. Licence holders must make reasonable provision for outside seating where smoking is not permitted.
32. All customers must be seated, with no vertical drinking.
33. The Council may withdraw this licence at any time for any other reason than those stated above.

Appendix B – Template Notice of Application

NOTICE

for display by an applicant for a Pavement Licence.

[ClauseS 2] of the Business and Planning Act 2020.

I/We *(name of applicant)*,

do hereby give notice that on *(date the application is made/submitted)*

[I/we] have applied to City of Wolverhampton Council for a 'Pavement Licence' at: *(postal address of premises)*

known as *(name premises is known by)*

The application is for: *(brief description of application e.g outdoor seating to the front of the premises for serving of food and drink).*

Any person wishing to make representations to this application may do so by writing to: Licensing@wolverhampton.gov.uk

by: *(last date for representations being the date 7 days after the date the application is submitted to the local authority (excluding Christmas Day, Good Friday and bank holidays)*

The application and information submitted with it can be viewed on the Council's website: <https://consultation.wolverhampton.gov.uk/>

Signed

Dated *(date the notice was placed (must be the same date as date above)*

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