

Non-Statutory Licensing Committee

8 July 2020

Report title	Pavement Licences	
Wards affected	All	
Accountable director	Ross Cook, Director for City Environment	
Originating service	Licensing Services	
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Report to be/has been considered by	N/A	

Recommendations for decision:

The Non-Statutory Licensing Committee is recommended to:

1. Adopt the Pavement Licence regime;
2. Approve the implementation of the Pavement Licence Policy;
3. Approve the setting of a £25 application fee for a Pavement Licence; and
4. Delegate authority to determine applications, review licences and manage the appeal of decisions for Pavement Licences.

Recommendation for noting:

The Non-Statutory Licensing Committee is recommended to note:

1. That the activity regulated by Table and Chairs Permits is regulated by Pavement Licences, with a reduced public consultation period of seven days.

1.0 Purpose

- 1.1 To implement the provisions made relating to Pavement Licences by The Business and Planning Act 2020.

2.0 Background

- 2.1 As the country emerges from lockdown, pavement cafés have assumed a new importance given the strong scientific evidence of a lower risk of spreading coronavirus outdoors.
- 2.2 An outcome of the Council Plan is, “a vibrant, green city we can all be proud of”, which al fresco dining can help deliver. The hospitality industry has been particularly affected by the COVID-19 Pandemic and it is hoped that utilisation of highway space will foster a café culture, thus improving the City’s ambience.
- 2.3 The Business and Planning Act 2020 introduces a ‘Pavement Licence’, a temporary regime which will run in parallel to the Tables and Chairs Permit scheme operated under The Highways Act 1980. This is a temporary measure to support businesses in operating safely whilst social distancing is in place.
- 2.4 A licence permits a food and/or drink 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 or drink supplied from, or in connection with the use of the premises.
- 2.5 Pavement Licences are intended to help food and drink businesses quickly utilise highway space adjacent to their premises, for Summer 2020, as they have a seven-day public consultation period. This is much shorter than the Tables and Chairs Permit’s 28-day public consultation period. Businesses granted a licence can then use this space to sell food and drink from or furnish it for use by their customers.

3.0 Progress

- 3.1 A draft Pavement Licence Policy is included as Appendix 1 for consideration.
- 3.2 The government expects that Pavement Licences typically will last a year. It is proposed that Pavement Licences granted by the Council remain valid for the maximum amount of time permissible under the law, which is until 30 September 2021. This will financially support proactive food and drink businesses who apply before 30 September 2020, as they will not need to apply for a second Pavement Licence next year.
- 3.3 If the applicant has a licence to serve alcohol on-premises, temporary amendments to the Licensing Act 2003 contained elsewhere in the Bill will generally allow them to sell alcohol for consumption off the premises without needing to apply for a variation of their 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.

- 3.4 The maximum Pavement Licence fee is £100. However, it is proposed that the application fee for a Pavement Licence is £25, which will cover the costs of providing the licence. Fees are non-refundable, including if the application is refused or the licence surrendered.
- 3.5 Businesses who want to apply for permission to put furniture on the highway may still apply for a Tables and Chairs Permit under The Highways Act 1980. Tables and Chairs Permits operate for the duration of one financial year. This is advantageous to any business applying after March 2021, as the Pavement Licence regime has a national expiry date of 30 September 2021, unless extended by statute.
- 3.6 This legislation has been hurried through to respond to the challenges caused by COVID-19. As such, the Pavement Licence Policy has not received consultation from statutory bodies nor the public, however the basis for the Pavement Licence Policy is the Council's, "A-Boards, Tables and Chairs and Goods on the Highway Policy" which has undergone full consultation.

4.0 Delegations

- 4.1 It is proposed that the following responsibilities are delegated:

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

5.0 Financial implications

- 5.1 The £25 fee will not generate additional income it has been set at cost recovery to financially support an industry that has suffered significantly from COVID-19, with many businesses prohibited from opening by law.
[HM/30062020/T]

6.0 Legal implications

- 6.1 Pavement Licences are provided for by The Business and Planning Act 2020
- 6.2 Without a Pavement Licence, using the highway for the purposes described would constitute an offence of wilful obstruction of the highway (s.137 of The Highways Act 1980).
- 6.3 Anything that is done by a licence-holder pursuant to a Pavement Licence does not need a Highways Act permit; 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.
[RP/30062020/A]

7.0 Equalities implications

- 7.1 In determining an application, a local authority must have regard to its wider duties, including:
- the prohibitions on unlawful discrimination etc. in s.29 of the Equality Act 2010;
 - the Public Sector Equality Duty contained in s.149 of the Equality Act 2020;
 - the prohibition on acting in a way which is incompatible with right under ECHR by virtue of s.6 of the Human Rights Act 1998;
- 7.2 The guidance accompanying The Business and Planning Bill advises that, “clear routes of access along the highway must be maintained, taking into account the needs of disabled people, and the recommended minimum footway widths and distances required for access by mobility impaired and visually impaired people as set out in Section 3.1 of Inclusive Mobility”.
- 7.3 In turn, section 3.1 of Inclusive Mobility provides, “A clear width of 2000mm 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 could be regarded as the minimum acceptable under most circumstances, giving sufficient space for a wheelchair user and a walker to pass one another. The absolute minimum, where there is an obstacle, should be 1000mm clear space”.
- 7.4 A requirement of licensing and a standard condition of licence is that 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, this cannot be for more than 6 metres.

7.5 An Equalities Analysis is included as Appendix 2.

8.0 Climate change and environmental implications

8.1 In determining an application, a local authority must have regard to its duty under s.89 of The Environmental Protection Act 1990 to keep relevant highways clear of litter and refuse.

8.2 It is a standard condition that the licensable area must be kept clean and clear of all debris and litter during the licensed hours.

9.0 Human Resources implications

9.1 There are no Human Resources implications.

10.0 Corporate Landlord implications

10.1 There are no Corporate Landlord implications.

11.0 Covid Implications

11.1 Pavement licences will support the safe operation of businesses by providing more space for socially distancing customers.

11.2 Businesses are required to ensure that they are 'COVID Secure' before reopening, with a risk assessment which addresses coronavirus.

12.0 Schedule of background papers

12.1 Pavement licences: draft guidance (Ministry of Housing, Communities & Local Government)

12.2 Business and Planning Bill 2019-21 (Department for Business, Energy and Industrial Strategy)