

REPORT TITLE: INTRODUCTION OF 'PAVEMENT LICENCE' POLICY UNDER  
THE BUSINESS AND PLANNING ACT 2020

15 SEPTEMBER 2020

REPORT OF CABINET MEMBER: Cllr Jackie Porter, Cabinet Member for Built  
Environment and Wellbeing

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WARD(S): ALL

PURPOSE

This report is to make Members aware of central Government's introduction of Pavement Licences. These are a recently introduced, temporary permission for hospitality businesses to make provision for outdoor seating for customers in light of the coronavirus (COVID-19) pandemic, for which Local Authorities are responsible for administering and monitoring.

This report also includes a new Pavement Licensing Policy, which formally sets out the process for administering applications for Pavement Licences under the Business and Planning Act 2020.

RECOMMENDATIONS:

1. That members agree the implementation of the Pavement Licensing Policy in support of economic recovery and that applications for Pavement Licences are charged at the recommended rate of £100

## IMPLICATIONS:

### 1 COUNCIL PLAN OUTCOME

- 1.1 Vibrant Local Economy
- 1.2 By clearly outlining the process for businesses to obtain Pavement Licences, the Council will contribute to the essential post-lockdown recovery of the hospitality industry. Outdoor, 'al-fresco' style dining contributes to ensuring that the city, market towns and rural communities have attractive visitor offer.
- 1.3 Living Well
- 1.4 Outdoor furniture licensed by Pavement Licences can contribute to the enhancement of open spaces and public areas, encouraging residents and visitors to enjoy the outdoors whilst dining.
- 1.5 Your Services, Your Voice
- 1.6 The implementation of a Pavement Licensing Policy ensures that the application and determination processes for Pavement Licences are open and transparent.

### 2 FINANCIAL IMPLICATIONS

- 2.1 Application fees for Pavement Licences are capped at a maximum of £100, under section 2(1)(c) of the Business and Planning Act 2020. It has been decided to require the maximum permitted application fee of £100 for applications.
- 2.2 The application fee will fully cover the cost of administering any application, including the consultation and determination periods. However, this fee will not necessarily cover costs incurred for any enforcement action taken; i.e. sending notices and conducting compliance checks.
- 2.3 In circumstances where the City Council is required to take action to remedy breaches of the Licence and/or its conditions, the cost of such action will be recovered from the Licensee in the form of a £100 payment.

### 3 LEGAL AND PROCUREMENT IMPLICATIONS

- 3.1 The Business and Planning Act 2020 (the 2020 Act) requires that the local authority administer pavement licences and as such it is a service that must be provided as a statutory and not a discretionary function.
- 3.2 The 2020 Act introduces a new streamlined licensing regime to temporarily facilitate eating and drinking on the highway adjacent to a relevant premises. In essence, this replaces relevant elements of the Licensing Act 2003 – especially provisions around off sales and licence variations street café licences to place furniture on the highway under the Highways Act 1980, The

2020 Act also temporarily suspends the requirement for planning permission as may have previously been required under the Town and Country Planning Act 1990.

- 3.3 The intent of the 2020 Act is to be permissive and consequently introduces a streamlined and more cost-effective route for businesses with deemed consent provisions. Subsequently if the council does not determine the application before the end of the determination period (i.e. 7 working days from the day after the application is made), the licence is deemed to have been granted (subject to any relevant conditions). Therefore the city council must ensure it considers, consults and makes a decision on all applications within this time frame. The 2020 Act licencing does not permit the placement of tables and chairs in spaces or in areas which considered by the city council to be unsafe or not suited to such use as may result in an impact on public health and safety and a public.
- 3.4 In order to support the economic recovery of the local hospitality trade, the city council implemented the application process for Pavement Licences was implemented as soon as practicable after the legislation came into force.
- 3.5 The administration of Pavement Licences is a non-executive function (outside the scope of Cabinet) in accordance with section 8 of the Business and Planning Act 2020.
- 3.6 As a matter of best practice the policy clearly sets out how applications will be dealt with, consultation requirements and timeframes.
- 3.7 There is no right of appeal for the refusal or revocation of a Pavement Licence.

#### 4 WORKFORCE IMPLICATIONS

- 4.1 The Licensing team will manage any requests for Pavement Licences within existing resources.

#### 5 PROPERTY AND ASSET IMPLICATIONS

- 5.1 Should the Pavement Licence be in respect of a City Council property, colleagues from Estates will be consulted internally.

#### 6 CONSULTATION AND COMMUNICATION

- 6.1 Section 8 of the Business and Planning Act 2020 shows that the legislative functions in relation to Pavement Licences are not to be the responsibility of an authority's executive, and that there is no need for formal consultation. However, in order to ensure best implementation relevant bodies and authorities have been consulted informally as detailed below.
- 6.2 The Business and Planning Act 2020 prescribes the process for administering applications for Pavement Licences, and undertaking enforcement action.

Therefore, no public consultation has taken place on those elements of the policy which merely replicate the legislation.

6.3 Hampshire County Council, as Highways Authority, and Winchester City Council's Environmental Health Team have been consulted on elements of the policy, namely the local conditions applied to licences which are granted/deemed granted.

6.4 The final draft of the policy was put to both the Chair of the Licensing and Regulation Committee and the Cabinet Member for Built Environment and Wellbeing for their comments before any applications were administered under the policy.

6.5 No consultation has been undertaken with local residents or County Councillors.

## 7 ENVIRONMENTAL CONSIDERATIONS

7.1 Encouraging local people to visit local hospitality venues in our city centre and market towns supports the principals of local sustainability.

## 8 EQUALITY IMPACT ASSESSEMENT

8.1 Please see Appendix 2.

## 9 DATA PROTECTION IMPACT ASSESSMENT

9.1 Please see Appendix 3.

## RISK MANAGEMENT

<b>Risk</b>	<b>Mitigation</b>	<b>Opportunities</b>
<i>Property</i>	N/A	
<i>Community Support</i>	The Council acknowledges the need for the hospitality industry to recover following the COVID-19 lockdown, and therefore will grant Pavement Licences wherever possible.	
<i>Timescales</i>	In the event that the Council fails to respond to an application within the statutory determination period, the licence could be 'deemed granted'	

	regardless of the suitability of the proposal.	
<i>Project capacity</i>	N/A	
<i>Financial / VfM</i>	N/A	
<i>Legal</i>	The Policy could be challenged by Judicial Review, but as the Council's decision-making process is believed to be lawful, a challenge is considered to be unlikely.	
<i>Innovation</i>	N/A	
<i>Reputation</i>	N/A	The Council could seek to highlight and publicise the engagement work it has undertaken in relation to assisting businesses with obtaining Pavement Licences.

### SUPPORTING INFORMATION:

#### 10 Background

10.1 Permission to place furniture or other objects on the highway has previously been obtained under S115(E) of the Highways Act 1980. Permission granted is in the form of a 'Tables and Chairs Permit', although the name of this permission varies across authorities. The procedure for obtaining a Tables and Chairs Permit is as follows:

- a) Application submitted to local authority, complete with fee of £225 (set locally) and the following documentation:
  - (i) Site plan of the proposed area in which furniture will be placed.
  - (ii) Written consent to the proposal from any owners/occupiers of premises adjoining the relevant section of the highway. These persons are known as 'frontagers.' This consent must be obtained by the applicant prior to the submission of any application.
  - (iii) Proof of public liability insurance cover, minimum of £5,000,000.
- b) Once the application and relevant documents are received and validated by the Council, the applicant must display a notice at the front of the premises, with full details of the application made, for a period of 28 days. The notice must also specify how representations may be made in respect of the application.

- c) The Council will contact Hampshire County Council as the highways authority for their consent to the proposals.
  - d) The Council will consider Hampshire County Council's response, and any representations received, in the determination of the application. In the event that highways do not consent, a permit will not be granted.
  - e) The application will be granted / refused by the Council within 7 days of the 28 day consultation period ending.
  - f) Any permit granted shall be valid for a period of 12 months, unless surrendered/revoked.
- 10.2 The Business and Planning Act 2020 received Royal Assent on 22 July 2020. The Act introduced a new, expedited process for obtaining permission to place furniture on the highway in the form of a Pavement Licence.
- 10.3 The Act introduces a shorter consultation and determination period for applications, a maximum application fee and national conditions made by the Secretary of State. It also specifies that furniture can be used for both the service and consumption of food/drink, and that furniture must be removable i.e. not permanently fixed to the ground or any other structure.
- 10.4 Pavement Licences issued under the Business and Planning Act 2020 cannot be valid for any later than 30 September 2021 (when the legislation ceases to have effect).
- 10.5 There is no proposed refund to premises that already hold a Tables and Chairs Permit due to the short lived nature of the Pavement Licence provisions.
- 11 New Policy
- 11.1 To ensure that applications are dealt with in a fair and open way, and in accordance with the relevant legislation, Officers have produced a Pavement Licensing Policy as shown in Appendix 1.
- 11.2 The Policy details the application, consultation and determination procedures as set out by the Business and Planning Act 2020;
- a) Application (electronic only) submitted to local authority, complete with maximum application fee of £100 and the following documentation:
    - (i) Site plan of the proposed area in which furniture will be placed.
    - (ii) Written consent to the proposal from any owners/occupiers of premises adjoining the relevant section of the highway. These persons are known as 'frontagers.' This consent must be

obtained by the applicant prior to the submission of any application

- (iii) Proof of public liability insurance cover, minimum of £5,000,000.
  - (iv) Proof of the applicant's right to occupy the premises (e.g. a copy of the lease)
- b) Once the application and relevant documents are submitted to the Council, the applicant must display a notice at the front of the premises, with full details of the application made, for a period of 7 days (not including bank holidays). The notice must also specify how representations may be made in respect of the application.
  - c) The Council will contact Hampshire County Council as the highways authority for their consent to the proposals.
  - d) The Council will notify relevant Ward Councillors of the proposals.
  - e) The Council will notify Hampshire Constabulary's Counter Terrorism Unit of the proposals, in relation to managing risk around hostile vehicle attacks.
  - f) The Council will consider Hampshire County Council's response, and any representations received, in the determination of the application.
  - g) The application will be granted, granted with amendments or refused within 7 days of the 7 day consultation period ending. The Council's failure to respond within this time will result in the licence being 'deemed granted' subject to conditions published on the Council's website.
  - h) Any licence granted or deemed granted will be valid for a period of 12 months, or until 30 September 2021, whichever is soonest (unless surrendered/revoked).
- 11.3 The Policy also details the various grounds for refusal or revocation of a Pavement Licence, in accordance with the legislation.
- 11.4 The Policy introduces local conditions which will be applied to all licences, whether granted or deemed granted. National conditions, specified by the Secretary of State, are also included and must be adhered to.

## 12 OTHER OPTIONS CONSIDERED AND REJECTED

- 12.1 None. The legislation creates a new pavement licensing regime, the administration and monitoring of which is the responsibility of Local Authority.

- 12.2 There is a clear expectation that this licensing regime is implemented. Failure to implement will most likely result in action against the Council from local businesses that will be significantly impacted.

BACKGROUND DOCUMENTS:-

Previous Committee Reports:-

None.

Other Background Documents:-

Guildford Borough Council - Draft Pavement Licensing Policy

Portsmouth City Council – Draft Pavement Licensing Policy

Local Government Association - 'Licensing of outdoor drinking and dining', brief guidance note

NEXSTART – Fast Track Pavement Licences Advisory

RNIB – Letter to licensing authorities regarding accessibility and pavement licences

APPENDICES:

Appendix 1 – Pavement Licensing Policy

Appendix 2 – Equality Impact Assessment

Appendix 3 – Data Protection Impact Assessment