

REPORT TITLE: REVIEW OF PAVEMENT LICENSING POLICY

8 DECEMBER 2021

REPORT OF CABINET MEMBER: Cllr Lynda Murphy

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WARD(S): ALL

PURPOSE

The Government has extended the provision for Pavement Licences under the Business and Planning Act 2020 until 30 September 2022.

This report seeks to make minor amendments to the Council's existing Pavement Licensing Policy to ensure that it is consistent with the amended legislation.

RECOMMENDATIONS:

That the Licensing and Regulation Committee:

1. Agree the minor amendments to the Council's Pavement Licensing Policy, as set out in Appendix 1, to ensure that it is consistent with updated legislation.

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 continue to 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 publication 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 (as amended).
- 2.2 The council's current application fee for a Pavement Licence is £100. This report does not propose to amend this fee.
- 2.3 The application fee fully covers the cost of administering any application, including consultation and determination periods. However, this fee does not necessarily cover the costs incurred for any enforcement action taken; i.e. sending notices and conducting compliance checks.

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 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.
- 3.3 This report seeks to simply extend the provisions of the Pavement Licensing Policy until the Government's revised deadline for the provisions under the Business and Planning Act 2020.

3.4 There are no procurement implications as a direct result of this report.

4 WORKFORCE IMPLICATIONS

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

5 PROPERTY AND ASSET IMPLICATIONS

5.1 Colleagues from Estates will continue to be consulted on applications where they relate to Council owned property.

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.

6.2 However, the following agencies were consulted on the proposed Pavement Licensing Policy prior to its implementation in September 2020: Hampshire County Council as the Highways Authority; Winchester City Council's Environmental Health Team; Chair of the Licensing and Regulation Committee and the Cabinet Member for Built Environment.

6.3 This report proposes no changes to the way in which applications for Pavement Licences are administered and therefore further consultation is not required.

7 ENVIRONMENTAL CONSIDERATIONS

7.1 Continuing to encourage 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 These proposals raise no additional equality considerations beyond those identified in the existing equality impact assessment published in September 2020.

9 DATA PROTECTION IMPACT ASSESSMENT

9.1 These proposals raise no additional data protection considerations beyond those identified in the existing data protection impact assessment published in September 2020.

10 RISK MANAGEMENT

Risk	Mitigation	Opportunities
Financial Exposure	N/A	
Exposure to challenge	The Policy could be challenged by Judicial Review, but as the Council's decision-making process is considered to be lawful, a challenge is considered to be unlikely.	
Innovation		
Reputation		The Council could seek to highlight and publicise the engagement work it has undertaken in relation to assisting businesses with obtaining Pavement Licences.
Achievement of outcome	The proposals seek to ensure that the Pavement Licensing Policy continues to be relevant to the legislation to which it relates.	Opportunity to review the Policy to ensure that it is fit for purpose and complies with the relevant provisions of the Business and Planning Act 2020 (as amended).
Property	N/A	
Community Support	The Council acknowledges the need for the hospitality industry to recover following the COVID-19 lockdown, and therefore will continue to grant Pavement Licences wherever possible.	
Timescales	The proposed amendment to the policy seeks to ensure that applications continue to be considered in line with a relevant and up-to-date policy.	
Project capacity	N/A	
Other	N/A	

11 SUPPORTING INFORMATION:

Background

- 11.1 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.
- 11.2 The Act introduced 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.
- 11.3 The provision for Pavement Licences was due to expire on 30 September 2021. At the time that it was introduced in July 2020, the Government did not anticipate further tightening of COVID-19 restrictions beyond this date.
- 11.4 In March 2021, the then Housing and Communities Secretary Robert Jenrick confirmed that the provision for Pavement Licences under the Act would be extended until the end of September 2022. The Act makes provision for the legislation to be extended at section 26.
- 11.5 The proposed extension of provisions does not entitle holders of Pavement Licences to an automatic extension of their existing permission. Those who wish to continue to place furniture on the highway beyond September 2021 will have to reapply and pay the £100 fee.
- 11.6 The licensing authority is now required to administrate applications for Pavement Licences under the Business and Planning Act 2020 until 30 September 2022.

Changes Proposed

- 12 The revised Pavement Licensing Policy shown at Appendix 1 details the proposed changes that are shown tracked.
- 12.1 The proposed changes are to ensure that the Pavement Licensing Policy remains current with the amendments to the legislation, and to clarify the expiry date of existing Pavement Licences.
 - i) Page 7: Explanation of extension to provisions under the relevant legislation, and confirmation of new expiry date of provisions under that legislation.
 - ii) Page 7: Clarification that Pavement Licences with an expiry date of 30 September 2021 will not be automatically extended, and that licence holders must make a new application and pay the £100 fee.

iii) Page 8: Amended '2021' to '2022.'

13 OTHER OPTIONS CONSIDERED AND REJECTED

- 13.1 None. The amendment to the legislation extends the pavement licensing regime, the administration and monitoring of which is still the responsibility of the licensing authority.
- 13.2 There is a clear expectation that this licensing regime continues to be administered. Failure to continue making provision for applications of this nature would most likely result in action against the council from local businesses that would be significantly impacted.

BACKGROUND DOCUMENTS:-

Previous Committee Reports:-

LR 534 Introduction of 'Pavement Licence' Policy under the Business and Planning Act 2020 (15 September 2021)

Other Background Documents:-

GOV.UK: ['Jenrick confirms extension of pavement licences to help high streets recover'](#)

APPENDICES:

Appendix 1: Revised Pavement Licensing Policy