



EAST STAFFORDSHIRE BOROUGH COUNCIL

REPORT COVER SHEET

Title of Report:	Pavement Licences – Business and Planning Act 2020	To be marked with an 'X' by Democratic Services after report has been presented
Meeting of:	Corporate Management Team w/c 27 th July 2020	
	Licensing Committee 4 th August 2020	
	Leader and Deputy Leaders [DATE]	
	Leader's / Leader of the Opposition's Advisory Group / Independent Alliance Advisory Group [DATE]	
	Cabinet [DATE] / Council [DATE]	
	Scrutiny Audit and Value for Money Council Services Committee [DATE] / Scrutiny Community Regeneration, Environment and Health and Well Being Committee [DATE]	



Is this an Executive Decision:	NO	Is this a Key Decision:	NO
Is this in the Forward Plan:	NO	Is the Report Confidential:	NO
If so, please state relevant paragraph from Schedule 12A LGA 1972:	[]		

Essential Signatories:

ALL REPORTS MUST BE IN THE NAME OF A HEAD OF SERVICE

Monitoring Officer: **Angela Wakefield**

Date Signature

Chief Finance Officer: **Sal Khan**

Date Signature

EAST STAFFORDSHIRE BOROUGH COUNCIL

Report to Licensing Committee

Date: 4th August 2020

REPORT TITLE: Pavement licences – Business and Planning Act 2020

PORTFOLIO: Regulatory Services

HEAD OF SERVICE: Mark Rizk

CONTACT OFFICER: Margaret Woolley Ext. No. x1479

WARD(S) AFFECTED: All

1. Purpose of the Report

- 1.1. To explain the provisions of the Business and Planning Act 2020 regarding pavement licences.
- 1.2. To advise that the powers under the Business and Planning Act 2020 are to be a new addition to the list of Licensing Committee Functions for as long as the provisions of the Act remain in force.
- 1.3. To seek authorisation for delegation of all the functions, powers and duties of the Council set out in the Business and Planning Act 2020 in respect of pavement licences to the Head of Service responsible for the Licensing function, the Enforcement Manager and officers within the Licensing and Enforcement Teams.
- 1.4. To advise and seek authorisation for the set of conditions applicable to the issuing of a pavement licence.

2. Executive Summary

- 2.1. The Business and Planning Act received Royal Assent on 21 July 2020. It brought in provisions for pavement licences. This new process introduces a streamlined and cheaper route for businesses such as cafes, restaurants and

bars to secure a licence to place furniture on the highway. This will support businesses to operate safely while social distancing measures remain in place. This will provide traders with much needed income over the summer months and protect jobs.

3. Background

- 3.1. A pavement licence is a licence granted by the local authority, or deemed to have been granted, which 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. This is a streamlined process to allow businesses to secure these licences in time for the summer and, where they are deemed to have been granted, allow these licences to remain in place for a year but not beyond 30th September 2021. Where a pavement licence is granted, clear access routes on the highway will need to be maintained, taking into account the needs of users.
- 3.2. A set of conditions has been produced which takes into account those conditions required by Staffordshire County Council taken from their Commercial Obstructions Policy, Local Conditions and two national conditions which relate to no obstructions and smoke free seating.
- 3.3. The no obstructions relate to - Preventing traffic, other than vehicular traffic from:
 - Entering the relevant highway at a place where traffic could otherwise enter it,
 - Passing along the relevant highway,
 - Having normal access to premises adjoining the relevant highway,
 - Preventing any use of vehicles which is permitted by a pedestrian planning order or which is not prohibited by a traffic order,
 - Preventing statutory undertakers having access to any apparatus of theirs under, in, on or over the highway,
 - Preventing the operator of an electronic communications code network having access to installed apparatus.
- 3.4. A “smoke-free seating condition” is a condition that, where the furniture is to be put on the relevant highway, it consists of seating for use by persons for the purpose of consuming food or drink, the licence-holder must make reasonable provision for seating where smoking is not permitted.

4. Contribution to Corporate Priorities

- 4.1. Value for money council
- 4.2. Community regeneration
- 4.3. Environment and health and wellbeing.

5. Report

- 5.1. The Business and Planning Act 2020 (“the Act”) came into force on 21 July 2020. The guidance to the Act states that the purpose of the pavement licence provisions in the Act make it easier for premises in England which serve food and drink such as bars, restaurants and pubs to seat and serve customers outdoors through temporary changes to planning procedures and alcohol licensing. Alcohol licensing changes will allow operators to serve alcohol for consumption off the premises.
- 5.2. Any person who uses or proposes to use premises as a public house, wine bar or other drinking establishment or uses or proposes to use premises for the sale of food and drink for consumption off the premises can apply to the Council for a pavement licence.
- 5.3. A pavement licence allows the licence holder to put removable furniture on part of the highway adjacent to the premises for either or both of the above purposes.
- 5.4. An application for a pavement licence must be published and is subject to public consultation for a period of 7 days. Before the Council determines the application it must take into account any representations made and must consult with the Highway Authority and any other person it considers appropriate. After the end of the consultation period the Council may either grant the licence or reject the application. A pavement licence may be granted for such a period of time as the Council may specify in the licence. If the licence does not specify a time period then the licence will expire at the end of 30th September 2021.
- 5.5. Importantly, if the Council does not grant the licence or reject the application within 7 days after the end of the public consultation period, the licence is deemed to be granted. Because of this short time period it is necessary that the power to determine applications for pavement licences is delegated to the Head of Service with the responsibility for the Licensing function, the Enforcement Manager and Officers within the Licensing and Enforcement Teams.
- 5.6. A licence may be granted subject to conditions, either imposed by the Act, by the Secretary of State or by the Council. If following the grant of a licence, the Council considers that the licence holder has breached any conditions of the licence the Council may revoke the licence, or serve a notice on the licence holder requiring steps to be taken to remedy the breach of conditions.
- 5.7. The Council may also revoke a pavement licence if some or all of the part of the highway to which the licence relates has become unsuitable for any purpose for which the licence was granted, or as a result of the licence being granted there is a risk to public health or safety, or anti-social behaviour or public nuisance is being caused or risks being caused, or the highway is being obstructed (other than by anything being done by the licence holder pursuant to the licence), or anything material stated by the licence holder in their

application was false or misleading, or the licence holder did not post a notice about the application on the premises.

- 5.8. It is recommended that the power to revoke pavement licences and serve notices under the Act be delegated to the Head of Service for the Licensing function, the Enforcement Manager and Officers of the Licensing and Enforcement Teams.
- 5.9. The Council can charge a fee for an application for a pavement licence up to a maximum of £100.
- 5.10. A benchmarking exercise has been carried out with other local authorities in Staffordshire in respect of the fee.
- 5.11. Cannock DC, Stoke CC, Tamworth BC and Newcastle are not making a charge. Stafford BC and Staffordshire Moorlands are setting their fee at £100.
- 5.12. In Derbyshire, South Derbyshire DC is proposing £100 as their fee.
- 5.13. As the legislation allows local authorities to charge a fee to a maximum of £100, a calculation exercise has been undertaken. This included all administrative activities that are required for the accepting, checking of the application and publishing, dealing with the consultation exercise and any representations. It also included other activities such as producing and issuing of the licence.

6. **Financial Considerations**

This section has been approved by the following member of the Financial Management Unit: Anya Murray.

- 6.1. The main financial issues arising from this Report are as follows:

Revenue	2020/21	2021/22	2022/23
Additional licence fee income		£2,460*	

*based on an indicative 30 licences.

- 6.2. The Council can charge a maximum of £100 for a pavement licence.
- 6.3. In accordance with the Corporate Fees and Charges Policy, following a measure of officer time it has been decided to set the fee at **£82**.
- 6.4. This equates to approximately two hours of officer time. This has taken into account accepting an application and an officer checking the form and plan and that it complies with our conditions. Publishing the application on our website. It also takes into account the officer conducting the necessary consultation exercise (and any subsequent representations) and issuing the licence.
- 6.5. The licence will be undertaken using existing staffing resources within the section.

7. Risk Assessment and Management

7.1. The main risks to this Report and the Council achieving its objectives are as follows:

7.2. **Positive** (Opportunities/Benefits):

7.2.1.

7.3. **Negative** (Threats):

7.3.1. Because of the short time limits set out in the Act there is a reputational risk to the Council if applications for pavement licences are not dealt with under delegated authority as expeditiously as possible.

7.4. The risks do not need to be entered in the Risk Register. Any financial implications to mitigate against these risks are considered above.

8. Legal Considerations

*This section has been approved by the following member of the Legal Team:
Angela Wakefield.*

8.1. The main legal issues arising from this Report are as follows;

8.2. The Business and Planning Act 2020 gives Council the power to grant pavement licences and deal with them thereafter.

9. Equalities and Health

9.1. **Equality impacts:** An equality and health impact assessment is not required.

9.2. **Health impacts:** An equality and health impact assessment is not required.

10. Human Rights

10.1. There are no Human Rights issues arising from this Report.

11. Sustainability (including climate change and change adaptation measures)

11.1. Does the proposal result in an overall positive effect in terms of sustainability (including climate change and change adaptation measures) N/A

12. Recommendation(s)

12.1. That all the functions, powers and duties contained in the Business and Planning Act 2020 in respect of pavement licences be delegated to the Head of Service responsible for the licensing function, the Enforcement Manager and Officers within the Licensing and Enforcement Teams. This will result in

applications being dealt with in a timely manner with the Council retaining control over the terms of a licence and its duration.

12.2. That the set of conditions be approved by the Licensing Committee as suitable for adoption.

12.3. That the Pavement License fee be set at £82.

13. **Background Papers**

13.1. <https://local.gov.uk/licensing-outdoor-drinking-and-dining>

13.2. <https://www.gov.uk/government/publications/pavement-licences-draft-guidance>

13.3. Staffordshire County Council Commercial Obstructions Policy

14. **Appendices**

14.1. Proposed Pavement Licence Conditions