

<b>Report of:</b>	<b>Head of Economic Prosperity</b>
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<b>Portfolio Leader:</b>	<b>Health &amp; Wellbeing</b>
<b>Key Decision:</b>	<b>No</b>
<b>Report Track:</b>	<b>Council: 05/08/20</b>

**COUNCIL**  
**5 AUGUST 2020**  
**NEW PAVEMENT LICENSING SCHEME**

**1 Purpose of Report**

- 1.1 The Business and Planning Act 2020 amongst other things creates a new licensing scheme to allow premises to place tables and chairs and associated furniture outside of their premises under 'pavement licences'. This report sets out recommendations on the authorisation of Officers to carry out the duties under the Act, and to authorise officers to produce policies and/or procedures.
- 1.2 Furthermore, the Act allows for a fee to be set for the issuing of Pavement Licence subject to a maximum of £100.

**2 Recommendations**

- 2.1 That all the functions, powers and duties contained within the Business and Planning Act 2020 in respect of pavement licences be delegated to the Head of Economic Prosperity.
- 2.2 The Head of Economic Prosperity is given delegated authority to determine applications for licences under this legislation including the duration of licences and any conditions attached.
- 2.3 The Head of Economic Prosperity can delegate the power to determine applications for licences under this legislation to other appropriate Officers who have suitable knowledge, qualifications and experience of licensing regimes.
- 2.4 The Head of Economic Prosperity is authorised to produce policies and procedures for the issuing of Pavement Licences.
- 2.5 Council considers whether the fee for the granting of a Pavement Licence is to be set at £100 or whether to waive the setting of a fee.

**3 Key Issues and Reasons for Recommendation**

- 3.1 The Business and Planning Act is now in force. The Act enables applications to be made to the Council for pavement licences. The Council needs a mechanism in place for determining pavement licensing applications. This is a matter reserved for full Council. It is recommended that this function is delegated to the Head of Economic Prosperity owing to the expertise of dealing with licensing matters within the Licensing service and the need for decisions to be made within a strict timescale to avoid deemed approvals being granted.

**4 Relationship to Corporate Priorities**

- 4.1 This Policy supports the Council's Corporate Priorities of Community Wellbeing and Promoting Prosperity through supporting local businesses and ensuring that the town centre environment remains safe and welcoming.

**5 Report Detail****Background**

- 5.1 The Act introduces a new licence – a 'pavement licence'. Operator businesses selling food and drink may apply to their local authority for authorisation to put furniture such as tables and chairs on the highway adjacent to their premises to sell food and drink from and/or for their customers to use.
- 5.2 As the country emerges from lockdown, pavement cafes have assumed a new importance given the scientific evidence of a lower risk of spreading coronavirus outdoors. With the re-opening of restaurants, cafes, bars and public houses from 4 July 2020, the pavement licensing regime set out in the Act, offers the hospitality sector a simpler administrative route to providing an outdoor environment for customers. The Government hopes this will give a boost to the hospitality sector, which is particularly badly hit by coronavirus, allowing premises to trade to as full an extent as possible given the constraints placed on capacity by social distancing.
- 5.3 The new licensing regime in the Bill provides a fast track procedure for the grant of a pavement licence which bypasses the existing regulatory regimes. Trading pursuant to a pavement licence does not need a Highways Act permit; is deemed to have planning permission; and is not street trading for the purposes of street trading legislation.
- 5.4 Pavement licences are a temporary measure. No licence will extend beyond 30 September 2021 or on such a later date as the Secretary of State may prescribe (but no earlier).
- 5.5 The pavement licensing regime is operated by District Councils in Staffordshire, with a requirement to consult with Staffordshire County Council as the Highways Authority.

- 5.6 The grant of a pavement licence will not alter the permitted operational hours of premises on an associated planning permission or premises licence.
- 5.7 There can be an application fee of up to £100 for a pavement licence to cover the administrative cost of issuing the application, and the ensuring compliance. The maximum fee will mean that the Council will make a loss on these applications, because the fee cap does mean that we are not able to operate on a full cost recovery basis. Officers understand that some, if not all Staffordshire LAs are going to apply a £100 fee. It is considered that it is more suitable to support businesses for the length of time that the licence is granted to afford them security and certainty. For this reason, officers are recommending that the licences run until 30 September 2021. This reduces the burden on businesses having to renew a licence and further reduces the time officers spend on this licensing regime.
- 5.8 The timescales for consultation and determination of a licence application are tight. The applicant must post a notice on the premises on the same day as the application is made. The notice must be in place for a consultation period of 7 days beginning with the day after the day the application is submitted. The Council must publish the application on its website and allow people to comment during the 7-day consultation period. The Council must consult with the highway authority and 'such other persons as the local authority considers appropriate' e.g. police, residential neighbours. The Council must determine the application within a period of 7 days beginning with the first day after the consultation period. If the Council does not determine the application within this period, the pavement licence will be deemed as granted.
- 5.9 The Council can either grant the licence application, with or without conditions, or reject it. There is no right of appeal. The Council must act reasonably in determining pavement licence applications in accordance with normal public law principles e.g. it must have regard to relevant considerations and disregard irrelevant considerations.
- 5.10 It is noted that there is no formal route of appeal set out in the legislation. It is recommended that decisions are made by officers under the Economic Prosperity Service, and any appeals are considered by the Head of Economic Prosperity.
- 5.11 In determining the application, the Council will need to evaluate whether the proposal is reasonably acceptable in the particular location, having regard to the temporary nature of the licence and the objectives of the Act. The Council must take into account any representations received and will have regard to Government guidance.
- 5.12 It is recommended that the Council adopt a new policy and/or procedure to assist in processing applications and decision making. Adopting a policy and/or procedure enables the Council to include conditions that will manage the impact and help guide applicants on the suitability of proposals. It is recommended that the production of any policy and/or procedure is delegated to the Head of Economic Prosperity and should follow Government Guidance, and emerging best practice.

Alternative options available to the Council

- 5.13 The Council could decide not to delegate powers in relation to pavement licensing, or to delegate powers to a different Officer or a Committee, or to the Licensing and Public Protection Committee. This is not recommended given the tight timescales for the processing of licence applications and deemed approvals in the event of failure to determine on time. The Council's Licensing team, within the remit of the Head of Economic Prosperity, supported by the Council's Legal Services Manager has the expertise to process and determine these applications.
- 5.14 The Council could decide that appeals against refusal of pavement licences could be heard by the Licensing and Public Protection Committee rather than the Head of Economic Prosperity.
- 5.15 The Council could also decide not to charge businesses a fee for applying for a pavement licence to support the Council's economic recovery agenda.

**6 Implications****6.1 Financial**

The Council can charge a fee of up to £100 per pavement licence application. This is unlikely to cover the full cost of administering the service.

**6.2 Legal**

Since the issue of pavement licences is a function of Council, it is the Council that must decide how this function is exercised, and the Council that must make any delegation of these powers.

**6.3 Human Resources**

None

**6.4 Section 17 (Crime Prevention)**

None

**6.5 Human Rights Act**

None

**6.6 Data Protection**

None

**6.7 Risk Management**

The risk of not accepting the recommendation is that the Council will not have in place an appropriate mechanism of determining applications for pavement

licences, which must be determined within strict timescales to avoid deemed licences being granted without the merits of the proposals being properly assessed.

**6.8 Equality & Diversity**

An equality impact assessment will be completed as part of the development of the policy/process for pavement licences.

**6.9 Best Value**

None.

**7 Appendices to the Report**

None

**Previous Consideration**

None

**Background Papers**

None