

Report to: Cabinet
Date of Meeting: 21 July 2020
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Subject: Pavement Licences- Business and Planning Act 2020

Purpose of report: To inform Cabinet of the changes to the issuing of pavement licences that will be brought in as part of Business and Planning Act 2020 (when enacted) as part of the Government's economic recovery and growth agenda in response to the COVID-19 Pandemic. The Act will pass the responsibility of consulting and issuing pavement licences on the public highway to District Councils in England requiring a decision within a very tight timeframe (14 days from application to decision). The Council needs to put in place authority for dealing with these applications.

Recommendation: That Cabinet;

- 1. Notes the content of the report, in particular the process that District Councils will have to adopt in issuing pavement licences to businesses within the District, which is 14 days (10 working days) to include the statutory consultation period and the granting or rejection of the licence application.**
- 2. Agrees the application process that East Devon will follow to determine these applications including the consultations that will take place and the local conditions (Appendix 1) that will be imposed on any grant.**
- 3. Gives delegated authority to the Strategic Lead (Governance and Licensing) to determine pavement licence applications under the Business and Planning Act 2020 together with imposing such additional conditions as may be deemed necessary as well as to take enforcement action including revocation of licences where considered appropriate to do so.**
- 4. Agrees that the Council will charge the maximum fee of £100 for the consideration of each application for a licence.**
- 5. Agrees the recruitment of a Grade 5 post on a fixed term (6 month) basis to support the administration of this new service.**
- 6. Gives authority to the Strategic Lead (Governance and Licensing) in consultation with the Portfolio Holder for Coast, County and Environment to make any necessary amendments to the process and local conditions which arise**

out of any changes made during the final passage of the Bill through Parliament.

Reason for recommendation:	Efficient and time critical administration of a new service which a District Council must provide.
Officer:	Henry Gordon Lennox, Strategic Lead (Governance and Licensing)
Portfolio Holder:	Portfolio Holder Coast, Country and Environment
Financial implications:	It is envisaged that the costs incurred will be covered by the fees charged.
Legal implications:	The draft Bill say that the powers conveyed in the legislation are not executive functions. Accordingly this is a decision properly for the Cabinet to determine, rather than the Licensing and Enforcement Committee. Given the shortness of time for these applications to be determined it is appropriate that Cabinet delegate the issuing of licences to officers and more specifically that they will be dealt with by the Licensing team who deal with alcohol and street trading licence applications as a matter of course. It is for Cabinet to determine the appropriateness of the Local Conditions.
Equalities impact:	Low Impact
Climate change:	Low Impact
Risk:	High Risk If applications are not administered effectively within the statutory time frame (10 working days) they are deemed granted and the Council will have lost control of the process in controlling the public highway.
Links to background information:	https://www.gov.uk/government/publications/pavement-licences-draft-guidance
Link to Council Plan:	Outstanding Place and Environment Outstanding Economic Growth, Productivity, and Prosperity Outstanding Council and Council Services

Report in full

Legal context

1. A pavement licence is a licence granted (or, if not determined in a certain period, deemed to be granted) by a local highway authority under Part 7A of the Highways Act 1980. It allows the licence-holder to place removable furniture over certain highways adjacent to the premises in relation to which the application was made 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. The Business and Planning Bill 2020, part of the Government's business recovery plan for tourism and the hospitality trades, is progressing through Parliament at the time of writing this report. It is expected that it will receive its royal assent in the third week or fourth week of July. As well as relaxing the planning and licensing laws it removes the power to grant pavement licences from the highway authority (Devon County Council) and transfers it to District Councils. It provides a streamlined process to allow businesses to secure these licences in time for the Summer and, where they are deemed to have been granted, it allows these licences to remain in place for a year but in an event not beyond 30 September 2021.
3. The Secretary of State for Business, Energy and Industrial Strategy, Alok Sharma MP, said: "The overall aim of the Bill is to provide an adrenaline boost to key sectors of our economy. We want to support the hospitality sector by allowing outdoor dining and off-premises sale of alcohol, helping the sector back on its feet with the promise of al fresco dining for all this summer."
4. Under the existing regime, the determination period (the period in which a decision must be taken or the application is deemed granted) is 28 days. Where granted, a licensee still needs to ensure that they comply with the other regulatory regimes – such as obtaining planning permission and ensuring their alcohol licence permits the activity. There is a fee of up to £200 payable. Conditions can be imposed on the licence which the licensee must adhere to.
5. The new process provides a cheaper, easier and quicker way for businesses to obtain a licence. It is expected that responsibility for pavement licences will revert back to local highway authorities after the COVID-19 pandemic, although there is a risk that this becomes a permanent arrangement.

Proposed changes

6. Applications will be subject to 7 days (5 working days) of consultation and then a decision has to be taken within a further 7 days (5 working days), effectively this means from application to issue of the licence is 14 days (10 working days). If there is no decision after the 14 days (10 working days) then the application is deemed granted on the basis of the Council's published local conditions.
7. There is one national condition about maintaining sufficient access for disabled people and others along pavements which will always apply with the distance determined by reference to specific guidance. It is recommended that this should be a minimum of 2m but is variable depending on specific circumstances. Advice will be given to ensure that applicants have regard to this before applying to avoid making wasted applications. There is detailed guidance which is referenced in the local conditions (see Appendix 1). Otherwise the conditions that should be imposed are left to be determined by the Council ('local conditions') and these must be published and will automatically apply to any grant. Where it is necessary to do so additional conditions may be imposed beyond the published local conditions when an application is granted. The Council's current proposed local conditions are attached to this report, they are subject to internal consultation to ensure that they cover the appropriate requirements.
8. If a local authority determines an application before the end of the determination period the authority can specify the duration of the licence, subject to a minimum duration of 3 months and provided any licence does not extend beyond 30th September 2021. If a licence is 'deemed' granted because the authority does not make a decision on an application before the end of the determination period, then the licence will be valid for a year but again will not be valid beyond 30 September 2021.

9. It is important to note that the grant of a pavement licence only permits the placing of furniture on the highway. Other regulatory frameworks still apply such as the need for alcohol licenses and the need to comply with registration requirements for food businesses. That said, if the applicant already has a licence to serve alcohol on-premises then temporary amendments to the Licensing Act 2003 will allow them to sell alcohol for consumption off the premises, within the pavement licence area without needing to apply for a variation of their licence. Equally an applicant will not need to obtain planning permission in that once a pavement licence is granted, or deemed to be granted, the applicant will also benefit from deemed planning permission to use the land within the pavement licence for anything done pursuant to the licence while the licence is valid.
10. The fee for applying for a licence under the new process is discretionary. However if sought it is capped at £100.
11. In terms of transfer of responsibility between the two authorities, there is no transition period and therefore as soon as the provisions come into force it will be the responsibility of the Council to accept and progress applications. The Council therefore needs to be ready to start receiving licence applications potentially from around 20th July or shortly thereafter.

Businesses eligible to apply

12. A business which uses (or proposes to use) premises for the sale of food or drink for consumption (on or off the premises) can apply for a licence to trade on the pavement. Businesses that are eligible include: public houses, cafes, bars, restaurants, snack bars, coffee shops, and ice cream parlours.

Government guidance - what is permitted

13. The furniture which may be used is:
 - counters or stalls for selling or serving food or drink;
 - tables, counters or shelves on which food or drink can be placed;
 - chairs, benches or other forms of seating; and
 - umbrellas, barriers, heaters and other articles used in connection with the outdoor consumption of food or drink.
14. This furniture is required to be removable. The advice is that local authorities should be pragmatic when determining what is 'removable' but in principle this means it is not a permanent fixed structure, and is able to be moved easily, and stored away of an evening.
15. It is anticipated that a large number of tourist/leisure centred businesses in our seaside towns, premises with alcohol licenses, catering and dining establishments will wish to take advantage of the relaxing of the planning regulations linked to pavement furniture and the pavement licence regime introduced in this piece of legislation.
16. It is important to note that if the Council does not determine an application within the relevant period then the licence is automatically granted and therefore businesses can place the proposed furniture such as tables and chairs within the area set out in the application for the purpose or purposes proposed. Effectively we lose control of the licensing regime.

Proposed administration of these licences by EDDC

17. The logical place for this new service to sit is within the Licensing Team. This team is already extremely experienced in the day to day administration and issuing of licences for

street trading and alcohol licensing under the Licensing Act 2003 and therefore there is a strong synergy with their existing service provision.

18. Applications must be sent and considered online (this is stated in the legislation) and it is proposed that this is through the Council's existing licensing systems via a website sited application form and guidance note. It is permissible to develop a standard application form and the Licensing Manager is currently drafting such an application form, consulting with Strata and the Devon County Council towards delivering the online application process.
19. An application to the local authority must:
 - specify the premises and, the part of the relevant highway to which the application relates;
 - specify the purpose (or purposes) for which the furniture will be used which must be to sell or serve food or drink, and/or for use by other people for the consumption of food or drink. In both cases the food or drink must be supplied from, or in connection with relevant use of the premises;
 - specify the days of the week on which and the hours between which it is proposed to have furniture on the highway;
 - describe the type of furniture to which the application relates, for example: tables, chairs, and/or stalls;
 - specify the date on which the application is made;
 - contain or be accompanied by such evidence of public liability insurance in respect of anything to be done pursuant to the licence as the authority may require; and
 - contain or be accompanied by such other information or material as the local authority may require.
20. The application process provides for the posting of notices, a site map, provision of details of the type and size of furniture to be used etc. The application must be accompanied by the £100 fee made by an online payment. While discretionary, the fee will be used towards covering the Council's costs of administration of the process – see section below on resources – and therefore it is recommended that it is applied. There will no doubt be different approaches adopted by authorities, but in terms of the other Devon Districts that are taking this on for the first time (Exeter being an exception to this) at the time of writing we have not heard of any that are specifically not imposing the £100 fee.
21. The Council's consultation process will involve Streetscene and Property and Assets to ensure that the requirement for landowner permission is flagged as well as ensuring that there is no conflict with other consents already granted (the Strand in Exmouth being a good example of where conflicts may arise). There will also be consultation with Environmental Health, the public, ward members, town and parish clerks, Devon County Council Highways and potentially Devon and Cornwall Constabulary if we hold any intelligence on Crime and Disorder. Such consultation can only last for a 7 day period, there is no mechanism to extend the consultation period.
22. As has been mentioned the Council has very limited time to collect together all the consultation responses, prepare a report, call a meeting and determine an application within the relevant 5 day working period. There are also reports from the County Council (as they are still receiving applications) that there has been an up surge in applications as businesses respond to COVID-19 restrictions. For both these reasons it will be impractical for this to be committee based decision-making and therefore the recommendation is that delegated authority be put in place for this to be dealt with by officers. This is of course already the case for the majority of applications that the Licensing Team progress currently. There is a risk that if it is not this way then there could be an increase in the number of

deemed granted licences as a result of non-determination. As deemed granted licences have effect for 12 months, in such a case the Council will have lost control of whether or not a licence should be issued at all or on a shorter time period and whether there are any additional conditions we may wish to impose.

23. The issued licence document will specify the period for which they are granted and will also include an hours of operation condition. Such detail is not therefore contained in the local conditions. It is anticipated that the Council will look to grant licences for 6 months or until 31st March 2020. The reason being that we do not yet know what volume of licences we might expect to receive, the combined impact of such licences on the use of the public highway and related space and of course the likely status of COVID-19 come Spring 2021 and therefore it seems prudent to be able to reassess licences ahead of Summer of 2021. In terms of the hours of operation, it is anticipated that the default will be from 10am to 10pm – permitting sufficient time for tables and chairs to be cleared before 11pm each night. However each application will be considered on its merits and in light of prevailing circumstances including licensing hours.

Local conditions

24. The legislation allows the Council to publish on its website a set of local conditions to which each licence is subject. These conditions must be reasonable in the circumstances. Early publication will give all licensees an understanding of what will be tolerated by this Council in safely managing the space to which the licence applies. It is also possible to apply further conditions when granting any licence which are tailored to the size, circumstance and operation as detailed in the proposed application. This will ensure that the public are safe under COVID-19 regulations and issues of anti-social behaviour can be controlled. Any premise breaching these conditions can be subject to enforcement action as set out at paragraph 26 below.

25. EDDC's proposed list of conditions for each licence application are set out in **Appendix 1** of the report. They are considered to be reasonable in the circumstances. That said, Cabinet may wish to consider them in more detail. For example, there is currently a condition preventing the use of glass outside and to require the use of "recyclable plastic/polycarbonate". The Council has committed to reducing single use plastics and therefore this condition may need to be considered in light of this and also the COVID-19 circumstances.

Enforcement

26. If a condition imposed on a licence is breached the local authority will be able to issue a notice requiring the breach to be remedied and the authority can take action to recover any costs. The authority may revoke a licence for breach of condition (whether or not a remediation notice has been issued) in the following circumstances:

Where:

- There are risks to public health or safety – for example by encouraging users to breach government guidance on social distancing by placing tables and chairs too close together;
- the highway is being obstructed (other than by anything permitted by the licence);
- there is anti-social behaviour or public nuisance – for example, the use is increasing the amount of noise generated late at night and litter is not being cleaned up;
- it comes to light that the applicant provided false or misleading statements in their application – for example they are operating a stall selling hot food and had applied for tables and chairs on which drinks could be consumed; or
- the applicant did not comply with the requirement to affix the notice to notify the public for the relevant period.

27. The local authority may also revoke the licence where all or any part of the area of the relevant highway to which the licence relates has become unsuitable for any purpose for which the licence was granted or deemed to be granted. For example, the licensed area (or road adjacent) is no longer to be pedestrianised. It is good practice for local authorities to give reasons where these powers are used.

Operations

28. The operation of these public highway pavement licences will be managed by Streetscene in consultation with the Licensing Team. They will oversee the management and derogation of space, the impact on litter, the impact on the collection of waste from street bins and issues affecting the disposal of trade waste in line with the local conditions, and will refer any breach of conditions to the delegated officer for review possible enforcement action.

Resourcing

29. There will be a clear impact on resourcing – in that the Licensing Team will be doing work that has not been done before. Given the comments from the County Council, it is requested that temporary support be agreed (either fixed term or secondment) for 6 months to assist in the delivery of this regime. As it is for 6 months this will enable it to be reviewed in terms of the number of applications received and work involved. The post will be a Grade 5 position which is approximately £30k per annum with on costs. It is anticipated that the post will be, or will be close to, self-funding given the application fee.

30. Should the Council choose not to levy the application fee and the additional support is agreed then a request will need to be made to Council for additional budget.