



**Agenda for Licensing and Enforcement  
Committee  
Monday, 27th July, 2020, 9.30 am**

**Members of Licensing and Enforcement Committee**

Councillors: J Whibley (Chairman), K Bloxham (Vice-Chairman),  
F Caygill, M Chapman, A Dent, S Gazzard, N Hookway,  
S Jackson, P Jarvis, C Pepper, G Pratt, B Taylor, T Wright,  
L Jeffery and T Woodward

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**Venue:** On line via the Zoom App. All Councillors and registered speakers will have been sent an appointment with the meeting link

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Thursday, 23 July 2020

1 Public Speaking

Information on [public speaking](#) is available online

2 Minutes of the previous meeting (Pages 3 - 7)

3 Apologies

4 Declarations of interest

Guidance is available online to Councillors and co-opted members on making [declarations of interest](#)

5 Matters of urgency

Information on [matters of urgency](#) is available online

6 Confidential/exempt item(s)

To agree any items to be dealt with after the public (including the press) have been excluded. There are no items which officers recommend should be dealt with in this way.

7 Pavement Licences- Business and Planning Act 2020 (Pages 8 - 19)

**To inform Licensing and Enforcement Committee of the changes to the issuing of pavement licences that have been brought in as part of Business and Planning Act 2020 as part of the Government's economic recovery and growth agenda in response to the COVID-19 Pandemic. The Act passes 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**

- 8 Verbal update on relaxation of licensing regime under Business & Planning Act 2020

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[Decision making and equalities](#)

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**EAST DEVON DISTRICT COUNCIL****Minutes of the meeting of Licensing and Enforcement Committee held at Council Chamber, Blackdown House, Honiton on 12 February 2020****Attendance list at end of document**

The meeting started at 10.30 am and ended at 11.30 am

**26 Public Speaking**

There were no questions raised by members of the public.

**27 Minutes of the previous meeting**

The minutes of the meeting of the Licensing & Enforcement Committee held on 16 October 2019 were confirmed and signed as a true record.

**28 Declarations of interest**

Minute 31 Cranbrook Town Council: Kim Bloxham Cranbrook Town Councillor. Personal interest.

Minute 32 Seaton Taxi rank: Jack Rowland Seaton Town Councillor and member of Seaton Seafront enhancement scheme. Personal interest.

**29 Matters of urgency**

There were no matters of urgency.

**30 Confidential/exempt item(s)**

There were no confidential/exempt items.

**31 Committee Update - Licensing Act 2003, Gambling Act 2005, Taxi & General (Street Trading) Licensing**

The Licensing Manager presented his report to the Committee. It provided an update on the activities of the Licensing Service under the Licensing Act 2003, Gambling Act 2005, taxi legislation and general licensing, including street trading.

The Licensing Manager highlighted that the licensing team covered many things across East Devon. This included:

- All alcohol related matters.
- Taxis and private hire work.
- Gambling (excluding online betting)
- Street trading.
- Charitable collections
- Cemeteries and burial bookings.

It was noted that on 5 November 2019, officers attended the Ottery St Mary Tar Barrel event checking the various Temporary Event Notices issued for sales of alcohol and late night refreshment food stalls. 25 licensing checks were conducted and the working

arrangements involving licensing and the organisers works effectively over many months prior to the event.

In December an email was received from the Home Office sent to all Licensing Committee with an attachment letter from Kit Malthouse MP, Minister for Crime & Policing. The contents were provided for the information of the Committee as an Appendix and primarily referred to the government's desire to improve collaboration between Planning and Licensing Committees.

The Licensing Manager reported that the statutory fees prescribed by the Licensing Act 2003 had not been increased since they came into force on 7<sup>th</sup> February 2005. These fees were set centrally by the Secretary of State and there was no discretion on these fees, which must be administered and collected in accordance with the regulations.

Officers from EDDC Licensing and Finance services reviewed costs incurred to grant alcohol licences and notices and identified that a Temporary Event Notice (TEN), having a nationally set fee of £21, actually cost the council in excess of £60 to administer in 2015. The impact of fees not increasing is evident given that the licensing team administered 849 TENs for the year 2018/19 amounting to uncollected fees of more than £30,000.

It was noted that the number of taxi/private hire drivers was reducing year on year with fewer new drivers coming forward to replace them. The officers had conducted inspections of taxi vehicles whilst parked on East Devon taxi ranks ensuring that vehicles comply with legislation and meet required safety standards. Officers had also investigated five licence holders over the previous period, three of which concerned vehicle compliance and two relating to the behaviour of drivers resulting in written warnings being administered.

Members noted that from January 2020, new regulations introduced by Defra required all licensing authorities in England and Wales to submit details of currently licensed vehicles under the Air Quality (Taxis and Private Hire Vehicles Database) Regulations 2019. On 15<sup>th</sup> January 2020 licensing officers attended a licensing briefing organised by the Institute of Licensing where staff from Defra provided an update on the air quality Regulations including progress made by the cities creating Clear Air Zones (CAZs). Bristol has announced its aim of preventing privately owned diesel vehicles from entering the central zone in the day time whilst proposing that taxis and buses will pay a charge to enter the CAZ. This aspect of the CAZs had generated most interest from the East Devon taxi trade particularly regarding possible plans for other south west cities considering CAZs in the future.

The Council had identified climate change as a priority and has reflected this with the need for delivering green policies along with examples being the possible uptake of Ultra-Low and Zero emission vehicles.

Members had approved an increase to the Hackney Carriage Fare Tariff and resolved that Tariff 1 be increased on the first half mile by £0.50 to £3.50 along with the vehicle soiling charge being increased from £50 to £80. Before the resolution can proceed, the proposal must be advertised. The final stage will require every hackney carriage having the meter changed in each vehicle. Officers have identified that a number of taxis in the district operate on outdated meters and whilst they function correctly, they would not have the technical capacity to accept another tariff upgrade. To replace these would be another additional cost for the trade.

It was noted that the uptake of street trading has been high for events occurring in villages and towns since October 2017 and implementation had identified changing trends in locations being sought by applicants with Cranbrook being an area where consents had been granted over the last two years. Licensing Officers had worked closely with Cranbrook town council and gained greater understanding of the issues in the town. Following objections from the town council, two applications seeking to trade from vans parked in the town were refused by officers on the grounds of road safety.

The Licensing Manager reported that the Sidmouth Folk Festival event took place between 2<sup>nd</sup> and 9<sup>th</sup> August and all 60 sea front pitches managed by the licensing team were allocated under the process that had operated since 2008. Officer's work extended hours with a presence in the town from 7am over all eight days. It was noted that the council's move to offices in Honiton had increased the time officers were engaged in the event. The time spent by the licensing team each year from March through to August and the overall commitment involving members of the team is considerable as officers are engaged in trader applications from March through to summer.

This level of involvement through to attending the event impacts upon other areas of licensing work and it was considered timely to consider the future approach given increasing demands on the licensing team by reviewing whether the current process remained cost effective and the best use of council resources. An option that was at an early stage would be for the organisers of Sidmouth Folk week to have responsibility for trading on The Esplanade.

The Licensing Manager reported that the meeting between Members, Taxi Proprietors and Officers, which had been bi-annual would revert from 2020 to being annual, due to workload. With the next meeting being in November 2020.

During discussions the following points were noted:

- Suggested changes to the fees for Licensing Act 2003 applications, including TENSs to allow the Council to recover its costs.
- Concerns that any excessive increases to TENSs fees would discourage the applicants from smaller organisations.
- Could the increase in fees for Licensing Act 2003 and TENSs applications be on a sliding scale depending on what is applied for and the level of income expected.
- Concern expressed that there were a number of late applications made for TENSs. It was noted that there was little available in law to allow local authorities to restrict the late applications for TENSs.

**RESOLVED** 1. that the Chairman be requested to contact the Home Office and Local Government Association to argue for the principle of the introduction of locally set Licensing Act 2003 fees.

2. that the Licensing Manager's update report be noted.

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### **Seaton Taxi Rank**

The Licensing Manager's report updated the Committee on Seaton Town Council's request to remove the taxi rank in Marine Place and to relocate it on Castle Hill, Seaton. It was noted that the Town Council had requested this change which would require a series of legal steps to be taken before adopting the change. The Devon County Council Highways Officer had now indicated that they were happy for EDDC to consult on relocating the taxi rank in Seaton. The results of this consultation would be reported to the meeting of the Committee on 15 April 2020.

**RESOLVED** that the Committee note the update.

### 33 **Street Trading**

Members noted that following introduction of a new street trading regime in October 2017, there had been a number of changes, including removal of application fees in 2018. Through gaining a clearer understanding of how the regime had grown there was a proposal to further revise the policy. It was also proposed to commence the necessary work to require applicants to pay fees for obtaining consent, as detailed in the report, if approved, the changes were to recover costs incurred and to ensure standards were maintained for obtaining street trading consents across the district.

During discussions the following points were noted:

- The £30 Street Trading fee for each individual site may affect the viability of smaller businesses.
- The Street Trading situation in East Devon was constantly changing and it was not certain what was coming next.
- Are there any sites in East Devon where street traders know they could operate from? The Licensing Manager reported that this was a work in progress.
- Question about the rationale for reducing the time that a street traders can trade in once place from 30 to 20 minutes. The Licensing Manager reported this was a proportion timescale, if traders were allowed to stay any longer they could be expected to be charged for a street trading permit.
- The next meeting will discuss the consultation responses for these changes from Street Traders in East Devon.

The Chairman wished to thank the Licensing Office for the report.

- RESOLVED**
1. that the charging fees for Street Trading Consents with Application and Trading Fees as appended to Appendix B be approved and consultation be undertaken.
  2. that the revised Street Trading Policy including new guidelines relevant to Cranbrook be adopted.
  3. that the actions that will be taken as a consequence of the above be noted.

### **Attendance List**

#### **Councillors present:**

P Jarvis (Chairman)  
K Bloxham (Vice-Chairman)  
C Brown  
M Chapman  
N Hookway  
S Jackson  
J Rowland  
B Taylor  
J Whibley  
T Wright  
P Millar

**Officers in attendance:**

Christopher Lane, Democratic Services Officer  
Giles Salter, Solicitor  
Steve Saunders, Licensing Manager  
Zoe Jones, Licensing Officer

**Councillor apologies:**

S Gazzard

Chairman .....

Date: .....

<b>Report to:</b>	<b>Licensing and Enforcement Committee</b>
<b>Date of Meeting:</b>	27 <sup>th</sup> July 2020
<b>Public Document:</b>	Yes
<b>Exemption:</b>	None
<b>Review date for release</b>	None



**Subject:** **Pavement Licences- Business and Planning Act 2020**

**Purpose of report:** To inform Licensing and Enforcement Committee of the changes to the issuing of pavement licences that have been brought in as part of Business and Planning Act 2020 as part of the Government's economic recovery and growth agenda in response to the COVID-19 Pandemic. The Act passes 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 the Committee;**

- 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 Chair of the Licensing and**

**Enforcement Committee and Portfolio Holder for Coast, County and Environment to make any necessary amendments to the process and local conditions which arise out of administration of the regime.**

**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 Act specifically precludes this from being an Executive Function meaning, in accordance with our Constitution, that this is therefore a matter for the Licensing and Enforcement Committee rather than Cabinet. Given the shortness of time for these applications to be determined it is appropriate that the Committee 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 the Committee to determine the appropriateness of the Local Conditions.

**Equalities impact:** Medium Impact  
The report itself is low impact but the issue of equalities (specifically consideration of access by the disabled) is a key consideration for the local authority when discharging its duties under the Act.

**Climate change:** Low Impact

Comments

**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:** [Government Guidance – Pavement Licences \(outdoor seating arrangements\)](#)

**Link to [Council Plan](#):** Choose Priorities and delete what not appropriate.  
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 Act 2020, part of the Government's business recovery plan for tourism and the hospitality trades, has now become law and 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 Government have stated that these measures are to '*help businesses such as restaurants, bars and pubs get ready for summer and adapt to social distancing, by making it easier for them to serve food and alcohol for consumption off the premises and set up outdoor seating, whilst ensuring the needs for highway users, in particular disabled people, are considered throughout*'.
4. Under the previous regime, the determination period (the period in which a decision must be taken or the application is deemed granted) was 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 was a fee of up to £200 payable. Conditions were permitted to 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.
7. Any licence may only be granted where, taking into account any conditions to which it will be subject, it will not;
  - a. Prevent traffic (other than vehicular traffic) from entering or passing along the highway or prevent normal access to premises adjoining the highway,
  - b. Prevent any use of vehicles permitted by a pedestrian planning order or which is not prohibited by a traffic order,
  - c. Prevent statutory undertakers having access to their apparatus,
  - d. Prevent an operator of electronic communications code network having access to their equipment.
8. In deciding whether or not the placing of furniture in the highway would prevent traffic from entering, passing along or having normal access to premises off the highway, the authority must have particular regard to the needs of the disabled and the recommended distances required for access by disabled people as set out in guidance issued by the Secretary of

State. In this regard the Government has said that in '*most circumstances 1.5m of clear space should be regarded as the minimum acceptable distance between the obstacle and the edge of the footway*' although clearly detailed regard will need to be had to the guidance on a case by case basis. Advice will be given to ensure that applicants have regard to this before applying to avoid making wasted applications. The detailed guidance is referenced in the local conditions (see Appendix 1).

9. It is for the authority to determine the conditions that should be attached to any licence ('local conditions') and these may be published on the website to advise applicants of the conditions to which the licence will be subject. These conditions apply to any actual grant and, where they are published, any deemed 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 appended to this report, they have been subject to internal consultation to ensure that they are appropriate and cover areas of concern.
10. There are two national conditions that apply in the event that any grant does not have a relevant condition. Firstly, there is a 'no-obstruction condition' which ensures the licence holder does not cause any of those matters set out in paragraph 7 above. Secondly, there is a 'smoke-free seating condition' which seeks to ensure that the licence holder must make reasonable provision for seating where smoking is not permitted.
11. 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 30<sup>th</sup> 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.
12. 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, which would permit the activity 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.
13. The fee for applying for a licence under the new process is discretionary. However if sought it is capped at £100.
14. In terms of transfer of responsibility between the two authorities, there is no transition period and therefore it is now the responsibility of the Council to accept and progress applications. The Council therefore needs to have in place arrangements for receiving and determining applications now.

#### **Businesses eligible to apply**

15. 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**

16. 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.
17. 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.
18. 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.
19. 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**

20. 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.
21. 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 has drafted such an application form, consulting with Strata and the Devon County Council towards delivering the online application process.
22. 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.

23. 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 relevant 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) those that were sufficiently progressed with implementing this will be charging the £100 fee.
24. 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.
25. 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.
26. The issued licence document will specify the period for which they are granted and will also include the hours of operation. It is anticipated that the Council will look to grant licences for 6 months or until 31<sup>st</sup> 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. There is nonetheless an hours of operation condition included in the local conditions – to cover a situation where there is a deemed grant – but is expressed to defer to any hours specified in the licence itself.

### **Local conditions**

27. 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 31 below.

28. 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. It is worth noting that the local conditions include the requirement to adhere to the access requirements including the needs of the disabled and this therefore meets the main requirement of the national 'no-obstruction condition'. That said, the Committee may wish to consider them in more detail.
29. In terms of the national 'smoke-free seating condition', this was included to ensure that those businesses that had invested heavily in outside facilities for smokers should still be able to use this but in acknowledgment that there will be those who don't want to sit amongst smokers. Our original suggestion was to have a no smoking condition but given the Government's position this has been revised to say that the licence holders are advised to be smoking free but in the event that they do have outdoor smoking they must adhere to the national condition and relevant Government guidance (see background links) to ensure smoking free seating areas.
30. In addition, 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**

31. If a condition imposed on a licence is breached the local authority can revoke the licence or issue a notice requiring the breach to be remedied. A failure to comply with the notice permits the authority to take the action itself and to recover any costs. The authority may also revoke a licence in the following circumstances:

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
- ) because of the licence;
  - o 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;
  - o 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
  - o the highway is being obstructed (other than by anything permitted by the licence);
- ) 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.

32. It is good practice for local authorities to give reasons where these powers are used.

### **Operations**

33. 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 of possible enforcement action.

### **Resourcing**

34. 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.

35. 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.

### **Cabinet**

36. Cabinet received a very similar report this on 21<sup>st</sup> July 2020 where they resolved to accept the recommendations above and slightly revised Local Conditions (which are those attached to this report) in the event it was a Cabinet responsibility. However, as it is not within their remit, they have instead recommended to the Licensing and Enforcement Committee that the recommendations are accepted.



### **Schedule of Local Conditions for Pavement Licences Business and Planning Act 2020**

1. These Local Conditions are considered to form part of the Pavement Licence upon grant: Pavement Licence means a licence issued under the provisions of the Business and Planning Act 2020.
2. Permission is personal to the named Licensee who shall be the person who completes the Pavement Licence Application.
3. The Pavement Licence granted shall run for the period set out in the Pavement Licence and shall remain in force only for such period of time as the Licensee remains occupier of the Premises or until revoked by the Council, or surrendered to the Council by the Licensee. No Licence shall run for a period after 30th September 2021.
4. The Pavement Licence and furniture authorised shall only extend to the agreed area as set out in the plan annexed to the Pavement Licence application or such other plan as agreed by East Devon District Council in granting the Pavement Licence ("the Outside Area") and shall not extend beyond this area. No unauthorised obstructions are to be placed in the said area or on the adjacent public highway.
5. The tables and chairs shall be of such a design as may be approved by East Devon District Council as set out in the Pavement Licence Application and shall be kept in good repair and condition at the Licensee expense.
6. Should a gazebo or marquee be permitted by the Pavement Licence and used by the Licensee the following conditions apply:
  - i. Heavy ballast weights must be used at each leg to withstand uplift forces from wind. Calculations from the manufacturer, supplier or installers to show the weight requirements for each leg must be obtained and complied with.
  - ii. Anchorage should also prevent lateral movement of the structure. Ropes to anchorage points must not obstruct movement around or within the structure
  - iii. The Licensee should be aware of the design wind load of the structure, and have a procedure for monitoring weather forecasts, and making safe by removal of covers any structure likely to be put at risk by high winds
  - iv. The structure must be British fire-rated BS 5438 and/or BS 7837 (or any replacement standard) and marked accordingly, the Licensee must carry out a fire risk assessment of the structure.
  - v. Domestic garden gazebos and old style market gazebos cannot be accepted as they are not structurally safe for use in public areas.

- vi. Gazebos/stall coverings/marquees must be kept visually appealing and compliment the character of the area
7. The Licensee shall make no permanent or temporary fixtures to or excavations of any kind in the surface of the highway which shall be left undisturbed when the tables and chairs are not in use.
8. The Outside Area will be suitably managed by competent staff, i.e. to control the use of the Outside Area, to return trays, clear crockery and refuse and to maintain the area to as high a standard as is required inside the premises and to ensure that the conditions in this Licence are complied with at all times the Outside Area is in use.
9. The Licensee shall not display any advertisement, signboards, nameplate, inscription, flag, banner, placard, poster, signs or notices on the Outside Area unless such item is included within the Pavement Licence Application.
10. The Licensee shall make no claim or charge against East Devon District Council or Devon County Council in the event of the chairs or tables or other objects being lost stolen or damaged in any way from whatever cause.
11. All drinks served for consumption in the Outside Area shall be served in recyclable Plastic/Polycarbonate containers, no glasses or bottles are to be permitted in the Outside Area.
12. The Outside Area must be solely used by customers seated at tables and for consumption of food or drink supplied from the premises to which the licence relates.
13. Licence holders are encouraged to make the Outside Area smoking free but it is a condition of this Pavement Licence that where smoking is permitted the licence-holder must make reasonable provision for seating where smoking is not permitted. This provision must be as set out in the Pavement Licence Application and must be in accordance with the guidance issued by the Secretary of State such guidance being shown at the following address or such other updated guidance as may be issued.  
  
<https://www.gov.uk/government/publications/pavement-licences-draft-guidance/draft-guidance-pavement-licences-outdoor-seating-proposal>
14. The Outside Area must not be used for BBQ's, firepits or other cooking apparatus.
15. The Outside Area may only be used during the hours specified in the Pavement Licence and in the absence of any specific hours being shown in the Pavement Licence, the Outside Area shall not be used after 10.00pm. In the event that the Premises Licence relating to the Premises provides for an earlier closing time than either the Pavement Licence or this condition, the earlier time shall take precedence over the Pavement Licence and these Local Conditions.
16. The Licensee shall not sublet or share possession of the tables and chairs or the area covered by the Pavement Licence.
17. The Licensee must ensure that it provides an outside lidded refuse bin to enable refuse generated within the Outside Area to be easily deposited. The refuse collected in this refuse bin must be disposed of by the Licensee at the expense of the Licensee.
18. Waste from the Licensees' operations must not be disposed of in the litter bins provided by East Devon District Council, all waste from the Licensees' operations

must be disposed of at the expense of the Licensee(s) and not at any cost to be incurred by the Council.

19. The Licensee must ensure that the Outside Area is kept clean and clear of refuse and litter throughout the period that the outside area is operated. Refuse and litter deposited on the highway in the vicinity of the tables and chairs and other objects must be removed frequently throughout each day by the Licensee at the Licensees' expense or at more frequent intervals as may be required by or under the Environmental Protection Act 1990.
20. The Licensee shall remove the tables and chairs and other objects from the highway and the Outside Area outside specified trading hours and immediately if required to do so as to permit works in or the use of the highway by: Devon County Council, East Devon District or the relevant Town or Parish Council, the police, fire and ambulance services, any statutory funeral director or utilities operator or builders' vehicle, hearse and furniture removal van.
21. No alcohol shall be consumed in the Outside Area unless a licence has been issued by the relevant authority in advance or in compliance of an existing licence granted.
22. The Licensee shall at all times be responsible for ensuring that the Outside Area is only used by customers of the Licensee, to ensure that proper supervision and control is exercised over the Outside Area at all times not to permit any drunkenness or rowdy, unseemly or disreputable behaviour to take place on the Licensed Area.
23. The Licensee shall at all times be responsible for ensuring that customers and visitors permitted or otherwise to the Outside Area do not use the Outside Area for any illegal purpose or for any purpose or in a manner that may cause loss, inconvenience distress or alarm, or could be or could become a nuisance (whether actionable or not) to occupiers of neighbouring properties or members of the public.
24. The Licensee shall at all times be responsible for ensuring that the tables on the Outside area are cleared promptly of any dirty and used cutlery and crockery and are wiped down regularly and any spillages in the Outside Area are properly cleaned immediately.
25. The Licensee shall be responsible for any rates taxes and other outgoings which may be charged.
26. It is a condition of this Licence that clear routes of access along the highway must be maintained, taking into account the needs of disabled people, and the recommended minimum footway widths and distances required for access by mobility impaired and visually impaired people as set out in Section 3.1 of <https://www.gov.uk/government/publications/inclusive-mobility>. The Licensee must comply with the Guidance of the Secretary of State with regard to the needs of disabled people and the recommended distances required for access by disabled people, such guidance being shown at the following address or such other updated guidance as may be issued  
  
<https://www.gov.uk/government/publications/pavement-licences-draft-guidance/draft-guidance-pavement-licences-outdoor-seating-proposal>
27. Where East Devon District Council or Devon County Council deem it necessary to place any demarcation markings on the highway surface, the Licensee will be liable

for the costs incurred and for the maintenance and replacement costs which will be undertaken by either Council.

28. Musical entertainment whether amplified or not will not be permitted in the approved area unless a Temporary Event Notice is in place in relation to the area included in the Pavement Licence.
29. Failure to comply with the terms of the permission may result in the Council serving notice on the Licensee to rectify the fault. A continued failure may result in the Council rectifying the fault with the costs incurred being recharged to the Licensee. The licence could be revoked at the discretion of East Devon District Council.
30. Any changes to the area of structures and furniture requires submission of a new application and appropriate fee, there being no means for variance of a granted licence.
31. No refund of fees shall be provided upon grant of a properly issued Pavement Licence or in the event of revocation or surrender of the Licence.
32. The Licensee must at all times comply with all laws, Government and Health and Safety guidance regulations and requirements in respect of their operations Licensee must at all times particularly comply with COVID-19 Secure: safer public places guidance and any subsequent relevant guidance as may apply to the use of open spaces and licensed premises.
33. The Licensee must ensure that they have all planning permissions and all other consents, licences, permissions, certificates, authorisations and approvals whether of a public or private nature which shall be required by any competent authority for the intended use of the Outside Area.
34. The Licensee shall indemnify East Devon District Council and Devon County Council against all actions proceedings claims demands and liabilities which may at any time be taken made or incurred in consequence of the use of the tables and chairs and other objects. For this purpose the licensees must take out and keep in place, at the Licensees' expense, a policy of public liability insurance approved by the Council in the sum of at least £5 million in respect of any one event and must produce to the Council on request the current receipts for premium payments and confirmation of the annual renewals of the policy.