

Report to: Licensing and Enforcement Committee



Date of Meeting 17 February 2021

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Committee Update on Licensing Matters

Report summary:

Update on Pavement Licences – Business and Planning Act 2020

Recommendation:

That the Committee;

1. Notes the content of the report, in particular the process that District Councils adopted in July 2020 by issuing pavement licences to businesses within the District.
2. Agrees the adopted application process will continue with licences being granted, where suitable, to 30 September 2021.

Reason for recommendation:

Efficient and time critical administration of a service which a District Council must provide.

Officer: Steve Saunders, Licensing Manager (ssaunders@eastdevon.gov.uk)

Portfolio(s) (check which apply):

- Climate Action
- Corporate Services and COVID-19 Response and Recovery
- Democracy and Transparency
- Economy and Assets
- Coast, Country and Environment
- Finance
- Strategic Planning
- Sustainable Homes and Communities

Financial implications:

It is envisaged that the costs incurred will be covered by the fees charged.

Legal implications:

The Act specifically precludes the granting of pavement licences from being an Executive Function meaning, in accordance with our Constitution, it is therefore a matter for the Licensing and Enforcement Committee rather than Cabinet. The report is seeking the Committee's approval to grant the pavement licences to 30th September 2021 date which was approved in July 2020.

Equalities impact Low Impact

If choosing High or Medium level outline the equality considerations here, which should include any particular adverse impact on people with protected characteristics and actions to mitigate these. Link to an equalities impact assessment form using the [equalities form template](#).

Climate change 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.

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

Previous report to Licensing Committee July 2020

The Health Protection (Coronavirus Restrictions) (England) (No.4)

Regulations: <https://www.legislation.gov.uk/ukxi/2020/1200/contents/made>

Link to [Council Plan](#):

Priorities (check which apply)

- Outstanding Place and Environment
- Outstanding Homes and Communities
- Outstanding Economic Growth, Productivity, and Prosperity
- Outstanding Council and Council Services

Report in full

Business and Planning Act 2020 – Pavement Licences

1. The Business and Planning Act 2020, part of the Government's business recovery plan for tourism and the hospitality trades, gave the power to District Councils last summer to grant pavement licences by providing a streamlined process that allows businesses to secure these licences more quickly than those managed by Devon County Council highways. The arrangement was put in place for a year but still not beyond 30 September 2021 currently. The outcome of a review by the Home Office and Local Government Association is imminently awaited and that may be extended soon.

2. A meeting of this Committee in July last year adopted the streamlined pavement licence process together with determining them after a short consultation period along with setting local conditions for a nationally set fee of £100. None of those procedures are proposed for change or amendment today. Officers from a number of services delivered an online application process with new conditions and payment arrangements in a period of a month for the new process to go live. That would usually have been implemented over far longer timescales by all involved.

3. Delegated authority was provided 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.

4. The recruitment of a Grade 5 post based on a fixed term of 6 months to support the administration of the service was also approved although the timing of the implementation offered little time for businesses to take up licences before inclement autumn and winter weather removed the desire for customers being seated outside. The slowdown in applications occurred across Devon and possibly nationally given the timing of the changeover.

5. The new process was introduced by government to offer a cheaper, easier and quicker way for businesses to obtain a licence. However the high expectations of businesses that had applied may have been unrealistic as a result of national and regional promotion that gave scant regard to the high public safety requirements on pavements and beside busy roads.

6. It is expected that responsibility for streamlined pavement licences will remain with District Councils after September, although whether this becomes a permanent arrangement is not yet known until the outcome of the government review is circulated. The delay currently leaves authorities and businesses uncertain of the longer term options for permanent pavement licences.

Licences Issued

7. Three businesses applied to place tables and chairs on highways last autumn with two in Exmouth and one in Sidmouth with the outcome being two refused and with one granted. Devon County Council removed the temporary licence process it had briefly introduced last year when this new process passed to District Councils and one business that had previously taken advantage of the County licence then had to apply to EDDC when the County licence expired in September. Devon County Council highways subsequently objected to the new licence application when managed by EDDC on the basis of public safety leaving no option but to refuse the application based upon the landowner, being lead authority objecting.

8. Another application elsewhere was refused by the licensing team on the basis that the seated area requested encroached over 'tactile' pavement slabs being important to visually impaired pedestrians and with the fixtures also presenting a hazard to public safety. The pavement licence that has been granted is due to expire at the end of this month and a renewal application is expected.

9. Despite a relatively low fee set, the work conducted by officers delivering the new process together with the time required when accepting and determining applications is significant. Officers have had need to provide higher levels of contact with applicants and those seeking guidance and upon receipt of an application, have had need to visit locations during the short consultation period to measure and inspect the safety of each proposal. The short period of 14 days from receipt to grant places additional pressure. Post refusal time spent by officers and the Licensing Manager in respect of appeal and feedback has been significant to date and it is clear that each application has the potential to be contended when being unsuitable for grant.

10. The enforcement of licensed or unlicensed businesses remains with the County Council highways team, being the only agency with powers to remove furniture or to commence legal proceedings for unregulated breaches. The District Council may only revoke a pavement licence.

Continued administration of these licences by EDDC

11. Responsibility for these licences sits within the licensing team having gained experience in the administration and determination of applications last autumn. It was agreed that licences granted in 2020 would not be granted initially beyond 28th February 2021 and it is now proposed that the Committee resolves to continue the service to the current government deadline 30 September 2021.

12. In December 2020, the LGA conducted a short survey with District Council licensing authorities regarding adoption of this service to date, with a response provided by the Licensing Manager. Whilst no decision has yet been circulated before this meeting today, there is an understanding that the legislation will be extended for District Councils to continue beyond September. In the event that an update is received before this meeting but after this report has been circulated, an update will be included as a Matter of Urgency.

13. This Committee is reminded that the grant of a pavement licence only permits the placing of furniture on the highway and other regulatory frameworks still apply such as the need for alcohol licenses and the need to comply with registration requirements for food businesses. A pavement licence is a method to allow consumption although under the Business and Planning Act relaxation last year, if the applicant already had a licence to serve alcohol on-premises then temporary amendments to the Licensing Act 2003 allowed for consumption off the premises, which would permit the activity within the pavement licence area without needing to apply for a variation.

14. For any areas and locations that do not fall under the definition of a highway and being on land owned by this District Council, it requires an application to the Streetscene Events team for a Sitting

Out Consent attracting the same fee. Businesses using the central Strand area of Exmouth have been managed under Sitting Out Consents.

15. As the legislation has not yet extended power to District Councils to grant pavement licences beyond 30 September 2021, it currently means if a licence is 'deemed' granted until any change, then the licence will be valid for a year but again will not be valid beyond 30 September 2021.

16. The existing legislation outlines that if the District 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 the Council loses control of the licensing regime.

Resourcing

17. The first meeting on this subject outlined that there will be a clear impact on resourcing as the licensing team would be doing new work not being done before 2020 and whilst the volume of licences has not yet arrived, that impact is imminent. Experience gained last autumn for work involving pre-application advice, consultation and grant/refusal did confirm the impact on the team from a small number of applications and with high levels of contact. Previous approval was given for temporary support through a Grade 5 position, either fixed term or secondment for 6 months, with that extra support still necessary to allow the licensing team to discharge this regime.

18. The recent need to also recruit a new administrative Grade 3 position to address increased taxi work under the Statutory Standards was also approved for increased frequency of taxi checks and procedures being factored in to the 2021/22 year.

19. The combination of both areas of new work being undertaken by one new Grade 4 administrator position for 12 months will provide sufficient support to oversee the administration of pavement licences and also the new taxi standards work. Costings for a Grade 4 post working 37 hours over a 5 day week are £26,642, by incorporating funding already factored in for the Grade 3 post and supplemented by income from new pavement licence fees and renewals. Having one Grade 4 post for a 12 month period provides sufficient time to recruit and to train a postholder along with fully reviewing future need and costs.

20. The alternative to recruit a new Grade 5 position, for 6 months (pavement licences) and a new administrative Grade 3 position (taxi administration) for 12 months duplicates the recruitment, induction and training costs and offers a less attractive opportunity to recruit prospective applicants.