

## Report to Licensing and Enforcement Committee:

Date of Meeting 21 July 2021

Document classification: Part A Public Document

Exemption applied: None

Review date for release N/A



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### Committee Update on Licensing Matters

#### Report summary:

#### Update on Pavement Licences – Business and Planning Act 2020

#### Is the proposed decision in accordance with:

Budget Yes  No

Policy Framework Yes  No

#### Recommendation:

#### That the Committee;

1. Notes the update of this report with regard to the process adopted in July 2020 for issuing temporary Pavement Licences that was due to expire on 30 September 2021, and
2. Agrees with continuance of the adopted application process, conditions and fee for temporary Pavement Licences as provisions are being extended to 30 September 2022.

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)

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Portfolio(s) (check which apply):

- Climate Action and Emergency response
- Coast, Country and Environment
- Council and Corporate Co-ordination
- Tourism, Sport, Leisure & Culture
- Democracy, Transparency and Communications
- Economy and Assets
- Finance
- Strategic Planning
- Sustainable Homes and Communities

**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** Low Impact

**Risk:** Low Risk; Click here to enter text on risk considerations relating to your report.

**Links to background information** Previous report to Licensing Committee July 2020 [27/07/2020 09:30 \(eastdevon.gov.uk\)](#) Business and Planning Act 2020 (Pavement Licences) (Coronavirus) (Amendment) (Regulations 2021) <https://www.legislation.gov.uk/ukdsi/2021/9780348224344/contents>

**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

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**Report in full**

**Business and Planning Act 2020 – Pavement Licences**

1. The Business and Planning Act 2020 (the Act) was given Royal Assent on 22 July 2020 to support recovery of the hospitality sector and to allow the businesses to operate whilst managing the risks arising from Covid 19. The Act initially relaxed licensing and planning laws until 30 September 2021 by (a) making it easier for the hospitality sector to obtain permissions to seat and serve customers outdoors, creating a faster Pavement Licence application process and (b) enabling automatic extension of alcohol off-sales to premises that already had permission for on-sales. Through the Business and Planning Act 2020 (Pavement Licences) (Coronavirus) (Amendment) Regulations 2021, the government now extends these temporary provisions until 30 September 2022.

2. This Committee resolved at its meeting on 27 July 2020 to adopt the procedures and a set of conditions for issuing temporary Pavement Licences that are applied for on highways land in accordance with the temporary legislation originally until 30 September 2021.

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. Three processes are available to applicants seeking outdoor tables and chairs, namely;

4.1 **Temporary Pavement Licences** being managed by the Licensing Team on highways land),

4.2 **Permanent café Pavement Licences** still managed and available upon application from Devon County Council on highways and

4.3 **Sitting Out Consent (Leases)** for areas of land that are owned by this Council and being managed by Streetscene and Property Services under the same provisions for 4.1

5. The new temporary process under 4.1 introduced a potentially cheaper and faster way for businesses to obtain licences although high expectations of some applying last autumn may have been unrealistic as the necessary public safety requirements on pavements and beside busy roads equally exists. The application process managed by the County Council (4.2) for many years also remains available to applicants and most businesses have continued renewing existing licences with the County Council still. The desire for businesses to provide seating on land owned by EDDC has been delivered through Sitting Out Consent and Lease arrangements (4.3) under similar principles and through the same legislation as 4.1

6. The new provisions extending procedures to September 2022 will only apply to applications made on or after the Business and Planning amendment regulations come into force (date to be confirmed by government). This means that any applications submitted before the effective date to extend the

legislation will only be valid until 30 September 2021 and those businesses will need to reapply to maintain their current, temporary pavement licence beyond that date. There is no automatic extension.

7. Five applications for temporary Pavement Licences have been managed by the Licensing Team since August 2020 with the outcome being three refused on valid objections received and two granted. Should Devon County Council highways object to a temporary Pavement Licence application during consultation, the licence must be refused based upon the County Council being both the landowner and lead authority.

8. Although the number of businesses choosing to apply to the District Council is small, the application process and the necessary checks for public safety is time consuming. To streamline the reapplication process for the current two holders, the Licensing team will contact both businesses that hold a temporary Pavement Licence by way of email to clarify whether they propose to reapply on the same terms as before, capturing the mandatory requirements of the Act. Statutory consultation with stakeholders will remain the same and all comments will be considered as part of the decision-making process. Options for current holders of Sitting Out Consent Leases are being considered through ongoing measures involving the relevant Services and Members.

9. New applications for temporary Pavement Licences and any renewing will continue to be submitted via the existing on-line portal.

10. The Act allows local authorities to set a fee up to a maximum of £100 and despite being relatively low (and below that set by the County Council), the work undertaken in accepting and determining applications is significant. Officers have need to visit locations subject of application during the short consultation period to inspect the safety of each proposal. Post refusal has required reviewing on appeal and providing feedback when unsuitable for grant. The number of temporary Pavement Licence applications has been lower than first anticipated with new work in this area being absorbed within the Licensing team

11. Enforcement of unlicensed street furniture on highways rests with the County Council highways team being the authority with powers to remove furniture on a highways or to commence legal proceedings for unregulated breaches. A District Council can only revoke a temporary Pavement Licence.

12. The extension of the legal provisions beyond this year maintains the responsibility of the Council to accept and progress applications. The Council therefore needs to continue its arrangements for receiving and determining applications for Pavement Licences up to 30 September 2022.

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### **Financial implications:**

Continuation of temporary Pavement licence fee income

### **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 30<sup>th</sup> September 2021 date which was approved in July 2020