

 Council 5 August 2020		Agenda Item No. Urgent Item 1
Title	Pavement Licencing	
For further information about this report please contact	Lorna Hudson Regulatory Manager lorna.hudson@warwickdc.gov.uk	
Wards of the District directly affected	All	
Is the report private and confidential and not for publication by virtue of a paragraph of schedule 12A of the Local Government Act 1972, following the Local Government (Access to Information) (Variation) Order 2006?	No	
Date and meeting when issue was last considered and relevant minute number		
Background Papers	Business and Planning Act	

Contrary to the policy framework:	No
Contrary to the budgetary framework:	No
Key Decision?	No
Included within the Forward Plan? (If yes include reference number)	No
Equality Impact Assessment Undertaken	No

Officer/Councillor Approval		
Officer Approval	Date	Name
Chief Executive/Deputy Chief Executive	27/7/2020	Andy Jones
Head of Service	27/7/2020	Marianne Rolfe
CMT		
Section 151 Officer		
Monitoring Officer	27/7/2020	Andy Jones
Finance		
Portfolio Holder(s)	27/7/2020	Judy Falp
Consultation & Community Engagement		
Chairman of Licensing & Regulatory Committee		
Final Decision?		Yes
Suggested next steps (if not final decision please set out below)		

1. **Summary**

1.1 On Thursday 22 July The Business and Planning Act received Royal Assent and introduces the following key changes:

1. A new licence – a 'pavement licence'. The operators of 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. The new Act makes district councils rather than county councils the bodies who decide on pavement licence applications. This is despite the fact that county councils, having responsibility for the highways, are the decision-making bodies for the existing pavement licensing regime.
2. Automatic entitlement in law to Off sales of alcohol where business already have a premises licence for On sales of alcohol. (This is subject to specific exemptions and conditions)

1.2 The purpose of this report is to explain the Council's new function of issuing pavement licences and to delegate to the Head of Health & Community Protection the powers in relation to pavement licensing.

2. **Recommendation**

- 2.1 That Council delegates authority to the Head of Health and Community Protection, in consultation with the Chair of Licensing & Regulatory and relevant Portfolio Holder to adopt a procedure for dealing with applications for pavement licences under the Business and Planning Act 2020, including provisions relating to, consultation, local conditions and enforcement.
- 2.2 That Council delegates authority to the Head of Health & Community Protection to determine and refuse on technical grounds (e.g. lack of information supplied with application, not able to comply with mandatory conditions for example the "no-obstruction condition") applications received for pavement licences, under the Business and Planning Act 2020.
- 2.3 That Council delegates authority to the Head of Health & Community Protection in consultation with the Chair of Licensing & Regulatory to determine any refusals of applications received for pavement licences, or revocations of a licence under the Business and Planning Act 2020;
- 2.4 That the Council adopts a fee of £100 for the determination of applications for Pavement Licences.

3. **Reasons for the Recommendation**

- 3.1 **Recommendation 2.1** - To ensure transparency and clarity of the delegation of powers, duties and requirements under the relevant legislation within the Officer Scheme.
- 3.2 **Recommendation 2.2** - For applications where there are no issues a fast turnaround is necessary to ensure the proper management of the regime. The legislation requires the Councils to act quickly, 14 days in total (7 days for consultation and 7 days for determination) so we need to be in a position to engage in agile decision making. This also applies to those where the

application is incomplete to enable it to be rejected and resubmitted as quickly as possible.

- 3.3 **Recommendation 2.3** - As above but with the agreement of the Chair of the Licencing & Regulatory Committee a decision to refuse to be exempt from call-in due to the short time frames involved. If the local authority does not determine the application within the 10 working day period, the application will be deemed to have been granted.
- 3.4 **Recommendation 2.4** - There is discretion offered to Councils as to whether, and at what level, to set the fee for determination of such applications, the maximum allowed is £100. This is a brand new regime for Warwick District Council which will require additional resources to process, administer and enforce this new licence and as such a fee is suggested.
- 3.5 At the time of writing this report Stratford, North Warwickshire and potentially Rugby (Rugby to confirm) are all proposing to charge £100. (Nuneaton is proposing £80). Warwickshire County Council charge £121 under the existing street café regime and will offer a full refund for any relevant business's wishing to convert to the new regime.
- 3.6 Whilst recognising that the Council is there to support economic recovery, this work does not come without a significant cost in officer time, £100 equates to a cost to the business of 27p a day. It is estimated that the maximum fee of £100 fee will not cover the costs incurred by the Council for processing the application and any subsequent work.

4. Policy Framework

4.1 Fit for the Future (FFF)

The Council's FFF Strategy is designed to deliver the Vision for the District of making it a Great Place to Live, Work and Visit. To that end amongst other things the FFF Strategy contains several Key projects.

The FFF Strategy has 3 strands – People, Services and Money and each has an external and internal element to it. The table below illustrates the impact of this proposal if any in relation to the Council's FFF Strategy.

FFF Strands		
People	Services	Money
External		
Health, Homes, Communities	Green, Clean, Safe	Infrastructure, Enterprise, Employment
<u>Intended outcomes:</u> Improved health for all Housing needs for all met Impressive cultural and sports activities Cohesive and active communities	<u>Intended outcomes:</u> Becoming a net-zero carbon organisation by 2025 Total carbon emissions within Warwick District are as close to zero as possible by 2030 Area has well looked after public spaces	<u>Intended outcomes:</u> Dynamic and diverse local economy Vibrant town centres Improved performance/ productivity of local economy Increased employment and income levels

	All communities have access to decent open space Improved air quality Low levels of crime and ASB	
Impacts of Proposal		
The report brings forward proposals for licensing inline with the law for restarting the economy	Nil	The report brings forward proposals for licensing inline with the law for restarting the economy
Internal		
Effective Staff	Maintain or Improve Services	Firm Financial Footing over the Longer Term
<u>Intended outcomes:</u> All staff are properly trained All staff have the appropriate tools All staff are engaged, empowered and supported The right people are in the right job with the right skills and right behaviours	<u>Intended outcomes:</u> Focusing on our customers' needs Continuously improve our processes Increase the digital provision of services	<u>Intended outcomes:</u> Better return/use of our assets Full Cost accounting Continued cost management Maximise income earning opportunities Seek best value for money
Impacts of Proposal		
None	None	There will be a resultant cost to the Council of administering this scheme which will need to be monitored within the Service area and reported on as part of the budget process as required.

- 4.2 **Supporting Strategies** – The report does not directly contribute to any supporting policies but the introduction of the licensing enables the Council to help support the local economy.
- 4.3 **Changes to Existing Policies** – The report does not bring forward any changes to current policies.
- 4.4 **Impact Assessments** – There are no policy changes proposed and the proposals are implementing legislative changes, therefore an equality impact assessment has not been undertaken.

5. Budgetary Framework

- 5.1 It is anticipated that these licences will be operated at a slight loss to the Council, even if the maximum licence fee is charged. This will be monitored within the service area and reported on in line with budgetary process.

6. Risks

- 6.1 The primary risk associated with this report is not introducing the process swiftly enough so that licences cannot be issued and therefore the Council cannot fully support local businesses at this time.

7. Alternative Option(s) considered

- 7.1 Council could decide not to delegate powers in relation to pavement licensing, or to delegate to a different officer or a Committee. This is not recommended owing to the tight timescales for 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 Health and Community Protection, has the expertise to process and determine these applications.

8. Background

- 8.1 The Business and Planning Act received Royal Assent on 22 July 2020, the Act introduces a new licence – a 'pavement licence'. Operators of 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.
- 8.2 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 Business and Planning 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.
- 8.3 The new licensing regime is 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.
- 8.4 Key aspects of the new Act are as follows:
1. Pavement licences are a temporary measure and no licence will extend beyond 30 September 2021.
 2. The pavement licensing regime is operated by District and Borough Councils in Warwickshire (running alongside is the existing Street Café licence regime, managed by Warwickshire County Council). County have advised they would like existing street café licence holders to surrender any licenses and reapply under the new regime and will offer a full refund for anybody wanting to make the switch. However, there is no legal obligation for existing licence holders to do this if they do not want to.

3. It is important to note 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. The grant of a pavement licence will not alter the permitted operational hours of premises on an associated planning permission or premises licence.
4. If the applicant has a licence to serve alcohol on-premises temporary amendments to the Licensing Act 2003, will allow them to sell alcohol for consumption off the premises without needing to apply for a variation of their licence.
5. There can be an application fee of up to £100 for a pavement licence.
6. The timescales for consultation and determination of a licence application are tight.
7. The applicant must post a notice on the premises on the same day as the application is made.
8. The notice must be in place for a consultation period of 7 days beginning with the day after the day the application is submitted.
9. The Council must publish the application on its website and allow people to comment during the 7-day consultation period.
10. The Council must consult the highways authority, if they are not the highways authority; for security advice, local authorities should consult Police Licensing Teams, the authority must also consult such other persons as the local authority considers appropriate.
11. The Council must determine the application within a period of 7 days beginning with the first day after the consultation period.
12. If the Council does not determine the application within this period, the pavement licence will be deemed granted in full, until 30th September 2021.
13. The Council can either grant the licence application, with or without conditions, or reject it.
14. There is no right of appeal.
15. 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.
16. 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.
17. The Council must take into account any representations received and will have regard to Government guidance.
18. Local authorities need to have regard to the Public Sector Equality Duty, under the Equality Act 2010 when devising and implementing the new licensing regime, which includes the need to have due regard to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act. Any businesses which apply for a pavement licence will also need to have regard to their own duties under the Equality Act 2010, such as their duty under s.29 of the Act not to discriminate in providing their service.
19. Where a pavement licence is granted, clear access routes on the highway will need to be maintained, taking into account the needs of all users, including disabled people.
20. Licences can only be granted in respect of highways listed in section 115A(1) Highways Act 1980. Generally, these are footpaths restricted to pedestrians or are roads and places to which vehicle access is restricted or prohibited.
21. If a condition imposed on a licence (either by the local authority) or nationally 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 cover any costs.

22. The authority may revoke a licence in certain circumstances: For breach of condition, (whether or not a remediation notice has been issued) or where: there are risks to public health or safety, use of the highway is causing an unacceptable obstruction, use is causing anti-social behaviour or public nuisance, it comes to light that the applicant provided false or misleading statements in their application, the applicant did not comply with the requirement to affix the notice to notify the public for the relevant period.