

## Part A

**Report to:** Alan Gough, Group Head of Community and Environmental Services

**Date of meeting:** 23<sup>rd</sup> July 2020

**Report author:** Senior Licensing Officer (AY)

**Title:** New Pavement Licensing Scheme

### 1.0 Summary

- 1.1 The Business and Planning Act has been passed by Parliament and amongst other things creates a new licensing scheme to allow premises to place tables and chairs and associated furniture outside of their premises under 'pavement licences'.
- 1.2 This report sets out recommendations for a pavement licence policy under which applications for such licences under the Bill will be processed and administered when it becomes law. The proposed Policy is included at Appendix 1 of this report.
- 1.3 In the event that the policy requires changing as result of Government guidance or legislative changes it is also recommended that the Head of Community and Environmental Services in consultation with the Chair of the Licensing Committee may amend the policy if necessary.
- 1.4 A report on the draft policy was approved by Cabinet at its July meeting when the Act was in draft form. At that time the draft bill was worded in such a way as to make the issuing of pavement licences executive functions. The Act as enacted has amended wording to make it clear that the issuing of licences is, in fact, a non executive function. As it is possible that businesses may apply for a licence immediately and the Licensing Committee who would have responsibility for this legislation will not be sitting to the Autumn the emergency provisions of the Council Functions scheme of delegation are being used to allow the Group Head as a Chief Officer to agree the policy.

### 2.0 Risks

#### 2.1

<b>Nature of risk</b>	<b>Consequence</b>	<b>Suggested Control Measures</b>	<b>Response</b> (treat, tolerate, terminate or transfer)	<b>Risk Rating</b> (combination of severity and likelihood)
Not introducing a policy	Officers and businesses do not have clear	Introduce a policy	Treat	High

	expectations of applications and standards, resulting in a lack of clarity			
Not confirming standard licence conditions	Licences are issued without consistent controls which may result in significant variations in the controls between premises	Confirm a list of standard conditions applicable to all licences	Treat	High
Not confirming the application fee	The council is not able to recover some costs of administering the regime	Confirm the application fee	Treat	High

### 3.0 Recommendations

- 3.1 That the policy detailing the application process for the new pavement licensing regime attached as appendix 1 is agreed.
- 3.2 That officers in the Environmental Health (Business) Team are given delegated power to determine applications for licences under this legislation with appeals and any revocations of Licences being determined by either the Group Head of Community and Environmental Services or the Head of Community Protection.
- 3.3 That the fee for each Licence be set at £100.
- 3.4 In the event that the legislation or guidance changes it is also recommended that the Group Head of Community and Environmental Services, in consultation with the Chair of the Licensing Committee, can review and amend the policy.

**Further information:**

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**Report approved by: Justine Hoy, Head of Community Protection**

## 4.0 Detailed Proposal

- 4.1 The Business and Planning Act 2020 has introduced a new, temporary, licensing scheme to allow premises to apply for a licence to place removable furniture on the highway adjacent to their premises. These licences are referred to as pavement licences.
- 4.2 Businesses were already able to apply for a licence to place tables and chairs on the highway under the provisions of the Highways Act 1980. Watford Borough Council administers and processes such applications under delegated authority from Hertfordshire County Council
- 4.3 The licensing scheme introduced under the Business and Planning Act is designed to support business by introducing a light touch, fast track process for obtaining licences for outdoor spaces. It is also important to note that this licensing scheme is a temporary scheme, with the legislation specifying that these provisions shall end on 30 September 2021, or on such a later date as may be prescribed (but no earlier).
- 4.4 Officers would recommend that the council adopt a new policy to assist in processing applications and decision making. Adopting a policy enables the Council to include conditions that will manage the impact and help guide applicants on the suitability of proposals. It is suggested that this policy be similar to the existing policy for outside seating licences in order to promote consistency, although it is acknowledged that the council are not able to simply duplicate the existing policy due to differences in the legislation. We will try and identify where the licensing regimes differ. Officers have developed the proposed policy at appendix 1 in consultation with Disability Watford, the Police, Highways, the BID, Chamber of Commerce and other internal partners.

## Applicable Premises

- 4.5 A pavement licence may only be granted to put removable furniture on a part of a public highway for the purposes of selling food and/or drink as part of their business, or for people to consume such food and/or drink.
- 4.6 For the purposes of pavement licences, the 'relevant use' is defined in the legislation of a premises means using the premises as a public house, wine bar, other drinking establishment, or any other use for the sale of food and/or drink for consumption on or off the premises. This is very similar to the council's existing policy where tables and chairs could only be granted to food-led premises.

## Applications

- 4.8 Applications must be made in writing and in such form as the council may specify. The legislation also encourages applications to be submitted electronically. Officers

will be creating an application form which asks for the details required by the legislation and also by the proposed policy.

- 4.9 The application must also be accompanied by such a fee as the local authority may require, but may not exceed £100 which is a legal cap on the fee.
- 4.10 Officers advise that licensing fees should not be set at such a level where they intend to make a profit or be used to discourage premises from applying, and should operate under full cost recovery where possible.
- 4.11 Under the current licensing scheme for tables and chairs, the fee for a new application is set at £397, and the fee for renewal is set at £108. The renewal fee is less due to the fact that we operate a simplified renewal process, and the amount of officer time required to process such an application is reduced. It should be noted that it is difficult to put an exact figure on the processing time for a new licensing regime and the costs associated with enforcing such a regime. However, the amount of officer time in processing and issuing a licence for a new application under the new pavement licence scheme will not be less than the officer time taken to process a renewal application under the existing scheme. Officers also advise that some applications may be required to be determined by officers where objections have been received. The legislation does cap the application fee, and therefore officers would recommend that the fee is set at £100. This will mean that the council will make a loss on these applications, but the fee cap does mean that we are not able to operate on a full cost recovery basis. Officers did consider whether recommending setting a lower fee to support business recovery was appropriate. However, we understand the majority, if not all Herts LAs are going with £100 fee. We consider the more suitable support to businesses to be the length of time the licence is granted for to enable security and certainty. For this reason officers are recommending the licences run until the legislation expires, so currently September 2021. This also reduces the burden on officer time.
- 4.12 The legislation states that applications must contain specified information, as well as how applications may contain or be accompanied by such other information or material as the local authority may require.
- 4.13 The council's Finance team advise that the minimum level of cover for public liability insurance be £5 million per incident, which is the same required for other licensing applications such as street trading and the existing tables and chairs licensing regime under the Highways Act. Officers would suggest that we adopt the same approach.
- 4.14 The council currently require a plan showing the licensed area to be submitted for applications for pavement licences under the Highways Act. The guidance issued by the Government does state that a plan is suitable for a council to request. Officers would suggest that we do request plans to be submitted with applications as an aid

to assessing applications and also to assist in enforcement. Details of the furniture are also suggested to be included so that only suitable furniture is permitted.

## **Consultation**

- 4.15 The council are required to advertise the application. Officers would suggest that this is done as per existing licensing applications in the publication and distribution of a weekly bulletin of applications, which is circulated internally and externally and published on our website.
- 4.16 Applicants are required to display a notice advertising the application on the application in such a format as the council may specify. Officers will draw up a template notice, and the Government guidance does also contain a template notice.
- 4.17 Before making a determination, the council are required to consult the highways authority (Hertfordshire County Council) and such other persons as the local authority considers appropriate.
- 4.18 The following parties are consulted on current applications for tables and chairs licences under the Highways Act:
- Hertfordshire County Council
  - Hertfordshire Constabulary
  - Development Control of Watford Borough Council
  - Hertfordshire Fire & Rescue Service
  - 15 nearest properties to the application
- 4.19 The legislation states that the local authority may grant a pavement licence only if the application does not:
- prevent traffic (either pedestrian or vehicular) from accessing or passing along the relevant highway
  - prevent pedestrians from having normal access to neighbouring premises
  - prevent any statutory undertakers or communications network operator from accessing any plant or equipment in, on, or over the highway
- 4.20 Having considered the factors that can be considered when determining applications and decisions it is proposed consultation is undertaken for this type of application with:
- Hertfordshire County Council
  - Hertfordshire Constabulary
  - Environmental Health and,
  - Immediate neighbours via letter.

4.21 Given that planning permission is not required for this type of temporary use, officers believe these consultations will assist in determining applications according to the criteria set by the legislation as well as setting conditions to mitigate risks of impact.

### **Determining Applications**

4.22 At the end of the consultation period, the council may either grant a pavement licence or refuse the licence.

4.23 As mentioned earlier in paragraph 4.19, the council may only refuse an application if the grant of the licence would lead to obstruction of the highway or of neighbouring premises. As per our current policy on granting tables and chairs licences, officers would recommend that no licence will be granted where less than 2.5m of highway would be left between the boundary of the pavement licence area and the kerb of the highway or any item of street furniture such as lampposts, bike racks, or bus stops. Such a policy would ensure that there is sufficient space left on the highway for pedestrians to use the highway and clearly sets out our expectations for businesses. This is in excess of the Government's guidance which confirms that in most cases a clear pavement width of 1.5m should be regarded as the minimum under normal circumstances (section 3 of [Inclusive Mobility](#)).

4.24 It is noted that there is no formal route of appeal set out in the legislation. The Government guidance does suggest that where applications are refused these may be put before licensing sub-committee. Officers would not suggest that we adopt this approach. We would suggest that decisions are made by officers in the Environmental Health (Business) Team and that appeals against any decisions are considered by the Group Head of Community and Environmental Services or the Head of Community Protection. This is similar to the current process for tables and chairs licences under the Highways Act where decisions are only made at officer level. The legislation does sets out specific grounds as to when applications should be refused, and policy can guide officers as to how to interpret if those grounds do apply or not. It is acknowledged that this process is a light touch, fast track, process, and the involvement of a sub-committee, while encouraging debate on the application, could lengthen the application process and add to the costs.

4.25 It should also be noted that should an application be refused the applicant does have a right to apply again, so officers will provide feedback on parts of the application that caused concern so that the applicant can address these concerns and apply again.

4.26 A pavement licence may be granted by a local authority for such a period as the council may specify in the licence, or with no limit on its duration in which case it expires at the end of 30 September 2021. Under the current regime for licensing tables and chairs, licences are issued for 12 months, which is the maximum length

of a licence as prescribed by the Highways Act. Officers recommend that we grant licences for as long as possible, up to 30 September 2021. This gives assurance to businesses and security for any investment. It will also minimise the impact on officer resources for processing the applications. The Act does allow for enforcement action to be taken against irresponsible operators, including revocation as detailed further below. Monitoring of permissions granted will be undertaken in the town centre and other areas, and all complaints received will be responded to. Officers would recommend that we do not grant a licence for less than 12 months, to promote consistency between the two regimes.

- 4.27 If it is decided to grant licences for a specified time period which will end before 30 September 2021, and such licences will require renewal, it should be noted that a renewal fee will need to be set. This may be set at a different amount to the fee for a new licence since the same amount of work may not be required, but the fee will still not be able to be more than £100.
- 4.28 A pavement licence may be granted by a council subject to such conditions as it considers reasonable. Councils can publish standard conditions to be attached to all pavement licences. Officers recommend that standard conditions are proposed and set by policy. These would be based upon the standard conditions attached to tables and chairs licences issued under the Highways Act. This promotes consistency amongst businesses and sets out our expectations of businesses. The council will still retain the power to attach bespoke conditions where it is considered reasonable to do so.
- 4.29 The standard conditions will confirm the ‘no-obstruction’ and ‘smoke-free seating’ conditions, which are specified to be attached to all licences granted under this legislation, and are therefore mandatory conditions.

## **Enforcement**

- 4.30 The council may revoke a licence, or may serve notice on a licence holder, where the licence holder breaches any condition of the licence. The council may revoke a licence where:
- there is a risk to public health or safety
  - anti-social behaviour or public nuisance is being caused by the operation of the licence, or there is a risk of such problems being caused
  - the highway is being obstructed (other than by anything done by the licence holder pursuant to the licence)
  - some or all of the relevant highway covered by the licence has become unsuitable for use by the respective licence
  - anything material stated by the licence holder in their application was false or misleading, or
  - the licence holder did not suitably advertise their application by way of a public notice

4.31 As is the case with the taxi licensing, officers would recommend that the power to revoke a licence lies with the Group Head of Community & Environmental Services or the Head of Community Protection and these powers be implemented in line with the Compliance Policy approved by Members.

## 5.0 Implications

### 6.1 Financial

6.2 Awaiting comments from Finance.

### 6.3 Legal Issues (Monitoring Officer)

6.4 The law allows applicants to apply for licences straight away and the Council will only have 7 days to consider the request it is therefore important for the delegation and policy to be adopted as soon as is possible, in order to be able to manage the process effectively. As the Act makes it clear that the issuing of licences is not an executive function and there is no Licensing Committee of council meeting until the Autumn it is necessary for this to be an urgent decision taken by the Group Head of Community and Environmental Services as a chief officer under the emergency provisions of the council functions scheme of delegation.

### 6.5 Equalities, Human Rights and Data Protection

6.6 Under s149 (1) of the Equality Act the council must have due regard, in the exercise of its functions, to the need to –

- eliminate discrimination, harassment, victimisation and any other conduct prohibited by the Act
- advance equality of opportunity between persons who share relevant protected characteristics and persons who do not share them
- foster good relations between persons who share relevant protected characteristics and persons who do not share them.

## Appendices

Appendix 1 – Proposed Policy

### Background papers

**The following papers were used in the preparation of this report:**

- Inclusive Mobility
- Guidance: pavement licences (outdoor seating proposal)



- NEXSTART - Business and Planning Bill 2019-21 Pavement Licences advice note