

**Meeting date:** 30 July 2020  
**Report to:** Licensing Committee



**Subject/report title:** Pavement Licensing – Business & Planning Act 2020  
**Report from:** Assistant Director Communities & Partnerships  
**Report author/lead contact officer:** Anne Bettison – Licensing Team Leader

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**Wards affected:**

All Wards |  Bickenhill |  Blythe |  Castle Bromwich |  Chelmsley Wood |  
 Dorridge/Hockley Heath |  Elmdon |  Kingshurst/Fordbridge |  Knowle |  
 Lyndon |  Meriden |  Olton |  Shirley East |  Shirley South |  
 Shirley West |  Silhill |  Smith's Wood |  St Alphege

**Public/private report:** Public

**Exempt by virtue of paragraph:** N/A

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**1. Purpose of Report**

- 1.1 In consultation with the Chairman, the Licensing Committee are asked to urgently consider this item and depart from the usual five clear days' notice due to the need to approve the Pavement Licensing Policy and authorise officers to immediately administer and enforce the provisions under the Business & Planning Act 2020 which became immediately effective on 22<sup>nd</sup> July 2020. This includes a provision of deemed consent if applications are not dealt with within 14 days. There are no existing provisions within the constitution that would enable the Council to receive and determine these applications.
- 1.2 To consider the impact of a temporary Pavement Licensing regime under the Business & Planning Act 2020.
- 1.3 To note the introduction of the legislation and approve a policy in respect of the Council's approach to the pavement licensing regime.
- 1.4 To approve a fee chargeable for applications and to delegate decision making to the appropriate officers.

**2. Decision(s) recommended**

- 2.1 To note the Government's introduction of legislation and guidance for supporting local

businesses in relation to the granting of temporary Pavement Licences to enable businesses selling food or drink to better utilise outside space for seating/serving areas to help them operate safely while social distancing measures remain in place.

- 2.2 To approve the policy in respect of Pavement Licensing and delegate to the Assistant Director Communities & Partnerships for any further amendments or additions.
- 2.3 To approve a fee of £100 to be charged for applications under the regime.
- 2.4 To delegate responsibility for granting licences, attaching conditions, serving notices and revoking licences to the Assistant Director Communities & Partnerships.

### **3. Matters for Consideration**

- 3.1 The Business & Planning Act has introduced a temporary pavement licensing regime, designed to support businesses to operate safely while social distancing measures remain in place as they start to reopen following the COVID-19 pandemic. A Pavement Licence is granted by the Licensing Authority and allows the licence-holder to place removable furniture over the public highway adjacent to the premises in relation to which the application was made, for certain purposes. Any licence granted also benefits from deemed planning permission and, if the premises is licensed under the Licensing Act 2003 for on-sales of alcohol, it also benefits from deemed off-sales under the same terms conferred by the premises licence.
- 3.2 This streamlined process is intended to be cheaper, quicker and less onerous than the existing Pavement café licensing scheme under Part 7A of the Highways Act 1980 and allows businesses to secure a licence up to 30 September 2021, when they will expire along with the emergency provisions under the Act.
- 3.3 The maximum fee that can be charged for an application is £100, although it is unlikely that even at this maximum level, full cost-recovery will not be achieved.
- 3.4 However, since 1 April 2020, pavement café licences that are presently granted under Part 7A of the Highways Act 1980, cost £30 per sq. meter, with a minimum charge of £230.50 per application. This is considerably more than the cost of a new temporary licence, and the Cabinet Member for Highways and the Environment has reviewed this charging structure on a temporary basis and will now charge £100 for the remainder of this financial year to bring it in line with the new regime.
- 3.5 The new process will make it easier and quicker for businesses to obtain a licence. Applications must be determined within 14 days, which includes a 7 day consultation period, and a further 7 days (excluding public holidays) to grant the licence. It currently takes a minimum of 28 calendar days under Part 7A and can be much longer for those applications requiring planning permission. Applicants can still choose to apply through the existing Highways Act route (particularly if they want the furniture to be permanent or non-removable) as the two schemes will run in parallel until 30 September 2021.
- 3.6 Failure to determine the application within the 14 day period will result in the licence being deemed to have been granted for 12 months, or until 30 September 2021 (whichever is the shorter), and the business can place the proposed furniture within the area set out in the application (albeit with standard local and national conditions

attached). It is therefore important that resources are available to manage this process.

3.7 It is recommended that Licensing Authorities have a policy in place for dealing with applications under the new regime and a draft version is attached at Appendix A.

#### **4. What options have been considered and what is the evidence telling us about them?**

4.1 The temporary legislation does allow for a pavement licence to be issued free of charge, however, this approach would mean that the entire regime would need to be funded via other means and would also provide no contribution towards offsetting the income which is expected to be lost to the Council from the existing Highways Act Licensing regime. Some benchmarking has been carried out at a national level in the time available and indications suggest that there is no consistent approach – some authorities are not charging, some are charging the maximum £100, and there are a range of other fees being charged in between.

4.1 The policy sets out the approach the Licensing Authority will take when dealing with the temporary regime and in particular when determining applications. Appendix 1 to the policy lists a number of standard local conditions that will be attached to all licences granted, including those deemed granted.

4.2 It is not known at this point in time how many applications might be received. The Act allows for any business which uses (or proposes to use) premises for the sale of food or drink for consumption on or off the premises to apply for a licence. The current number of food businesses registered in Solihull that meet this criteria is 1,878 but some of these will not be adjacent to a highway or may have outside space on their own land that will not require a licence.

#### **5. Reasons for recommending preferred option**

5.1 It is recommended that the cost of a Pavement Licence, applied for under the Business & Planning Act 2020, should be set at the maximum limit of £100. This will provide much needed support to local businesses, whilst making some attempt to recover costs to avoid the regime being heavily subsidised by the Council's central funds.

5.2 Without a policy, applicants would not know what was expected of them before and during the application process, nor would they know what to expect from the Licensing Authority. The policy will also help to provide consistency in dealing with applications, as well as allowing the Licensing Authority the ability to help address concerns through the attaching of standard and additional conditions.

5.3 Whilst it is likely that some eligible businesses will not be minded to apply for a licence due to the nature of the business or the surrounding environment for example, and notwithstanding the fact that some businesses are on private land rather than located adjacent to a highway, it is possible that a high number of applications are received due to the ease, speed and affordability of a Pavement Licence, particularly as businesses are struggling financially due to social distancing measures. As there is likely to be a high volume of applications in a short space of time it would be prudent to ensure decision-making authority is delegated to authorised officers.

## 6. Implications and Considerations

6.1 State how the proposals in this report contribute to the priorities in the [Council Plan](#):

Priority:	Contribution:
<p><b>Economy:</b></p> <ol style="list-style-type: none"> <li>1. Revitalising our towns and local centres.</li> <li>2. UK Central (UKC) and maximising the opportunities of HS2.</li> <li>3. Increase the supply of housing, especially affordable and social housing.</li> </ol>	<p>The temporary regime is intended to help businesses to operate safely and provide much needed income over the summer months and protect as many hospitality jobs as possible during the current challenging economic period. The new legislation will enable local eligible businesses to increase capacity by utilising additional space. The application is simple, expedient and value for money, and is intended to remove short-term obstacles during the current challenging times.</p>
<p><b>Environment:</b></p> <ol style="list-style-type: none"> <li>4. Enhance Solihull's natural environment.</li> <li>5. Improve Solihull's air quality.</li> <li>6. Reduce Solihull's net carbon emissions.</li> </ol>	<p>Greater consideration will be given to furniture that is in keeping with the local environment.</p>
<p><b>People and Communities:</b></p> <ol style="list-style-type: none"> <li>7. Take action to improve life chances in our most disadvantaged communities.</li> <li>8. Enable communities to thrive.</li> <li>9. Sustainable, quality, affordable provision for adults &amp; children with complex needs.</li> </ol>	<p>By working collaboratively with partners, residents and local businesses, the Licensing Authority should be able to support the hospitality industry by permitting them to trade safely while at the same time taking into account the needs of local residents, neighbouring businesses and the local environment.</p>

## 6.2 Consultation and Scrutiny:

6.2.1 Officers from the Highways Authority, Planning, Economic Development and Environmental Health, as well as West Midlands Police and West Midlands Fire Service, will all be consulted on each application. Ward Members and Parish or Town Councils will also be consulted on applications in their respective areas. It is also the responsibility of the applicant to display a notice advertising the application for the duration of the public consultation period (7 days), to afford local residents and businesses in the area the opportunity to comment. The Licensing Authority must take views received during the consultation period into account when determining the application and, as a result of these comments, may feel it appropriate and proportionate to attach additional conditions to mitigate any concerns.

## 6.3 Financial implications:

- 6.3.1 As stated above at 4.3, it is not known who many businesses will apply for a pavement licence under the Business & Planning Act 2020.
- 6.3.2 The Act stipulates that an application must be sent to the Licensing Authority using electronic communications in such a manner as the authority may specify, and be accompanied by such fee not exceeding £100 as the authority may require. An online portal has been developed for this purpose, to enable applicants to complete all of the application questions, upload the relevant documents and make payment in a streamlined manner. This will ensure that staff are managing applications in the most efficient way without the need for constant follow-up queries. ICT services have advised that to set up a new fund code to enable payments to be made, there may be an additional cost of up to £2000. This should be recouped through application fees but will need funding in advance from elsewhere.
- 6.3.2 It should be noted and endorsed that full cost-recovery for this regime may not be possible due to the maximum fee chargeable for applications.

#### **6.4 Legal Implications:**

- 6.4.1 As covered in the Act and summarised in the accompanying guidance.

#### **6.5 Risk Implications:**

- 6.5.1 As stated above at 3.6, there are risks that applications are deemed granted if they are not determined within the 14 day period. This could be mitigated by ensuring appropriate resources are in place to handle the volume of applications received.

#### **6.3 Equality implications:**

- 6.3.1 The Licensing Authority will treat all applications received openly, fairly and consistently in line with the approved policy and in consideration of its Equality duties.

### **7. List of appendices referred to**

- 7.1 Appendix A – Draft Policy.

### **8. Background papers used to compile this report**

- 8.1 The Business & Planning Act 2020 and Explanatory Notes
- 8.2 Guidance: Pavement Licences (outdoor seating proposal)
- 8.3 Latest Government COVID-19 advice
- 8.4 NEXSTART Pavement Licences advice note
- 8.5 Al Fresco eating and drinking under the Business & Planning Bill 2020: the licensing aspects by Gary Grant of Francis Taylor Building Barristers
- 8.6 LGA brief guidance note: Licensing of outdoor drinking and dining

**9. List of other relevant documents**

9.1 None