

BUSINESS AND PLANNING ACT 2020
DRAFT POLICY ON PAVEMENT LICENSING

Relevant Portfolio Holder	Councillor Taylor
Portfolio Holder Consulted	No
Relevant Head of Service	Simon Wilkes – Head of Worcestershire Regulatory Services
Wards Affected	All Wards
Ward Councillor Consulted	N/A
Non-Key Decision	

1. SUMMARY OF PROPOSALS

- 1.1 The Council has been given responsibility for the issuing of pavement licences under the Business and Planning Act 2020. The licensing regime, which was implemented during the Covid-19 pandemic and was intended to be temporary, has now been made permanent.
- 1.2 Members are asked to consider and approve a draft Policy on Pavement Licensing for the purpose of consultation with relevant stakeholders.

2. RECOMMENDATIONS

- 2.1 **Members are asked to RESOLVE;**

To approve the draft Policy on Pavement Licensing shown at Appendix 1 for the purpose of consultation with relevant stakeholders.

3. KEY ISSUES

Financial Implications

- 3.1 The costs involved in carrying out the consultation would be met from existing budgets held by Worcestershire Regulatory Services.
- 3.2 The resource implications for Worcestershire Regulatory Services arising from the implementation and ongoing administration of the permanent regime, may need to be reflected in the Council's future contributions to the Worcestershire Regulatory Services budget.

- 3.3 The Business and Planning Act 2020 contains provisions allowing Councils to charge fees for the grant and renewal of licences to recover the costs of administering the licensing regime. Certain costs associated with removing and storing furniture placed on the highway without authorisation, can also be recovered by the charging of fees.

Legal Implications

- 3.4 It is considered best practice to have in place a clear and transparent policy that sets out the approach the Council takes in respect of its pavement licensing functions.
- 3.5 It is also considered best practice to carry out consultation on any such policy before it is implemented, in order to minimise the risks of any legal challenge to any aspects of that policy.

Service / Operational Implications

- 3.6 In July 2020 the Business and Planning Act 2020 was enacted. The legislation was expedited through Parliament to make provisions relating to the promotion of economic recovery and growth as the country emerged from various restrictions that had been put in place in response to the global Covid-19 pandemic.
- 3.7 Part 1 of the Act introduced provisions in England and Wales that put in place a streamlined process to enable businesses to obtain permission to place removeable furniture on the highway for use in connection with the sale and consumption of food and drink. The need for a streamlined process was to ensure that hospitality businesses could maximise their opportunities to trade profitably at a time when social distancing requirements guidance remained in place which impacted the number of customers that they could accommodate inside their premises.
- 3.8 Responsibility for issuing the new “pavement licences” was given to district councils in England, including Bromsgrove District Council.
- 3.9 As previously mentioned, the legislation was put in place very quickly and was commenced as soon as it was enacted. That meant that there was very little time available to put in place policies and procedures for dealing with applications.

- 3.10 Worcestershire Regulatory Services agreed to take on the temporary pavement licensing functions on behalf of the Council as they were best placed to do so given that they were already carrying out functions on the Council's behalf under the Licensing Act 2003.
- 3.11 Officers worked at pace to draft policies, application forms, licence templates and website content to enable businesses to be able to apply for pavement licences as soon as possible after the legislation came into force. The policies were approved under emergency delegations in place at the time to allow them to come into effect as quickly as possible.
- 3.12 The provisions in part 1 of the Business and Planning Act 2020 were only originally intended to remain in place for a temporary period, and section 10 of the Act originally stated that the provisions would expire at the end of 30 September 2021.
- 3.13 However, the temporary regime was subsequently extended on three separate occasions before a decision was taken to make it a permanent licensing regime. The regime was made permanent on 31 March 2024 by virtue of the commencement of provisions made in the Levelling Up and Regeneration Act 2023.
- 3.14 At the same time as making the regime permanent, some important amendments were made to the pavement licensing regime including extending the consultation and determination periods in respect of applications from 7 to 14 days each. The permanent regime also contains new powers to serve notices and remove furniture when it has been placed on the highway without permission.
- 3.15 Now that the pavement licensing regime has been made permanent, it is necessary to review and revise the Council's Policy on Pavement Licensing to ensure that it is fit for purpose and reflects the amendments that have been made to the regime since it was first introduced.
- 3.16 A draft Policy on Pavement Licensing has been prepared by officers and can be seen at **Appendix 1**. The draft policy is based on a template that has been created to form the basis for similar policies across all six district Councils in Worcestershire.
- 3.17 The draft policy has been drafted with reference to the guidance on pavement licences published by the Department for Levelling Up, Housing and Communities (DLUHC) on 2nd April 2024 under section 8 of the Business and Planning Act 2020. This guidance can be seen at: www.gov.uk/government/publications/pavement-licences-guidance/pavement-licences-guidance.

- 3.18 The first two sections of the draft policy set out the background to the licensing regime, explains the scope and provides assistance in understanding key terms from the legislation that are used throughout the document.
- 3.19 The draft policy goes on to set out how people apply for a licence, how those applications will be advertised and consulted upon and how they will be determined. The draft policy also sets out the standard duration of licences and the conditions that licences that are granted or deemed to have been granted, will be subject to.
- 3.20 The draft policy also sets out the approach that will be taken in respect of compliance and enforcement activities in respect of the pavement licensing regime.
- 3.21 Before approving the draft policy on pavement licensing, it is considered best practice to carry out a consultation exercise with key stakeholders, relevant businesses and the wider public. This consultation exercise is envisaged to take place over a period of around 8 to 10 weeks and will invite respondents to express their views on the various matters set out in the policy including:
- The requirements for making an application
 - The advertising of, and consultation on applications
 - The standard licence duration
 - The standard conditions that will apply to licences granted or deemed to be granted
 - The approach that will be taken to compliance and enforcement activities
- 3.22 The results of the consultation exercise will be reported back to the Licensing Committee for consideration before Members are asked to approve the policy to take effect.

4. RISK MANAGEMENT

- 4.1 Failing to carry out proper consultation on a policy of this nature before it is implemented, would increase the risk of the policy being subject to a successful legal challenge.

5. APPENDICES

Appendix 1 - Draft Policy on Pavement Licensing

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