



Bromsgrove
District Council

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POLICY ON PAVEMENT LICENSING

BUSINESS AND PLANNING ACT 2020

APPROVED WITH EFFECT FROM: DATE TO BE CONFIRMED

BROMSGROVE DISTRICT COUNCIL
POLICY ON PAVEMENT LICENSING
BUSINESS AND PLANNING ACT 2020

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1.0 BACKGROUND AND INTRODUCTION

- 1.1 Pavement licences are issued by the Council under the provisions of the Business and Planning Act 2020.
- 1.2 The Business and Planning Act 2020 created a streamlined process to allow businesses to apply for a licence to place removable furniture over certain highways adjacent to a premises in relation to which the application is made, for certain purposes.
- 1.3 The Business and Planning Act 2020 was originally passed in summer 2020 in response to the significant adverse impacts the Covid-19 pandemic was having on businesses in the hospitality sector and was originally only intended to be in place for a short period of time. The purpose of the legislation was to make it quicker and simpler for businesses such as cafes, restaurants and bars to secure a licence to place furniture on the highway.
- 1.4 The Levelling Up and Regeneration Act 2023 made permanent the provisions set out in the Business and Planning Act 2020 and it is hoped that this will provide much needed ongoing support for businesses and protect as many hospitality jobs as possible, particularly during times of increasing living costs.
- 1.5 This policy sets out the Council's approach to its functions and responsibilities with regard to the issue of pavement licences in its area. The policy document sets out a number of relevant matters including:
 - The Council's interpretation of the scope of, and key terms in, the relevant legislation
 - The Council's requirements in respect of applications for licences
 - The general approach and matters that the Council will take into account when determining applications for licences, including those who will be consulted
 - The conditions that the Council will attach to licences granted or deemed to be granted
 - The Council's approach to enforcement and revocation of licences
- 1.6 In formulating this policy, the Council has had due regard to the guidance issued by the Secretary of State under section 8 of the Business and Planning Act 2020.

2.0 SCOPE OF THE LICENSING REGIME AND DEFINITION OF KEY TERMS

What businesses can apply for licences?

- 2.1 Pavement licences can be applied for by businesses that use (or propose to use) premises for the sale of food or drink for consumption on or off the premises. Businesses that are eligible include public houses, cafes, bars, restaurants, snack bars, coffee shops, and ice cream parlours including where such uses form an ancillary aspect of another use, for example supermarkets or entertainment venues that also sell food or drink.
- 2.2 Businesses that do not use their premises for the sale of food or drink, for example hairdressing salons, are ineligible. However these businesses can apply to the relevant highway authority for permission to place furniture on the pavement under provisions contained in part 7A of the Highways Act 1980.

What furniture can be permitted by a licence?

- 2.3 A pavement licence can only permit the business to place removable furniture on a relevant highway. The Business and Planning Act 2020 states that furniture means:
- (a) counters or stalls for selling or serving food or drink,
 - (b) tables, counters or shelves on which food or drink can be placed,
 - (c) chairs, benches or other forms of seating, and
 - (d) umbrellas, barriers, heaters and other articles used in connection with the outdoor consumption of food or drink;
- 2.4 This furniture is required to be removable and related to the serving, sale and consumption of food or drink.
- 2.5 The Council will take a pragmatic common-sense approach when determining whether furniture is genuinely “removable.” However, in order to be considered removable, the Council expects any furniture to be capable of being moved easily and stored away from the relevant highway each night. Furniture that is fixed to either the ground or to walls, for example with screws or bolts, will not be considered by the Council to be removable furniture.

What furniture is not capable of being permitted by a pavement licence?

- 2.6 Any furniture that is not removable or that is not used in connection with the outdoor selling or consumption of food or drink are not permissible by a pavement licence.
- 2.7 Advertising boards are not included in the definition of furniture within the pavement licensing regime. As well as needing consent under the Highways Act 1980, advertising boards also require express advertising consent under the Town and Country Planning Regulations 2007.
- 2.8 Applicants that wish to place non-removable furniture onto the highway must apply to the relevant highway authority for permission under the Highways Act 1980.

Where can a licence allow furniture to be placed?

- 2.9 A pavement licence can authorise the placing of removable furniture on part of a relevant highway adjacent to the applicable premises.
- 2.10 The Business and Planning Act 2020 states that “**relevant highway**” means a highway –
- (a) to which Part 7A of the Highways Act 1980 applies, and
 - (b) which is not over Crown land or maintained by Network Rail.
- 2.11 When determining whether the part of the relevant highway is “**adjacent**” to the applicable premises, the Council will adopt a pragmatic approach and consider each case on its merits. In doing so all relevant factors will be considered including:
- How far the part of the relevant highway is from the frontage of the applicable premises;
 - What lies between the part of the relevant highway and the frontage of the applicable premises; and
 - What other businesses that are eligible to apply for a pavement licence are located in the vicinity of the premises that is the subject of the application.

Interaction with section 115E of the Highways Act 1980

- 2.12 Section 115E of the Highways Act 1980 enables the relevant highway authority (Worcestershire County Council) to grant a person permission to use objects or structures on, in or over the highway:
- for a purpose which will result in the production of income;
 - for the purpose of providing a centre for advice or information; or
 - for the purpose of advertising.
- 2.13 However, section 115E (5) of the Highways Act 1980 states that:
- “A council may not under this section grant a person permission to do anything which is capable of being authorised by a pavement licence under section 1 of the Business and Planning Act 2020”
- 2.14 Therefore, where someone is wishing to place removable furniture on part of a relevant highway in circumstances that fall in scope of the Business and Planning Act 2020, they must apply for a pavement licence under that legislation.
- 2.15 In circumstances where someone wishes to use objects or structures on the highway that are not within scope of the Business and Planning Act 2020, they will not be able to apply for a pavement licence, but may be able to obtain permission under section 115E of the Highways Act 1980. Any such requests for permission must be made to Worcestershire County Council who are the relevant highway authority for the area.

3.0 APPLYING FOR A LICENCE

Types of application

- 3.1 The process that someone needs to follow to apply for a pavement licence will depend on whether the application is an application for the grant of a licence or for renewal of a licence.
- 3.2 In order to be considered a renewal application, an application must:
- (a) be made by a person who already holds a pavement licence,
 - (b) be in respect of the premises to which the existing licence relates, and
 - (c) be for a licence to begin on the expiry of the existing licence and on the same terms.
- 3.3 A renewal application must therefore be made before the existing licence has expired. If the existing licence has already expired when the application is made, it will not be treated as a renewal application and will instead be treated as an application for the grant of a licence.
- 3.4 Likewise, if the licence holder wishes to change any of the terms of their licence, including amending the part of the relevant highway that the licence permits the furniture to be placed, then the application will not be treated as a renewal application and will instead be treated as an application for the grant of a licence.

Applying for the GRANT of a pavement licence:

- 3.5 Applications must be made on the Council's standard application form and must be submitted electronically to enquiries@worcsreqservices.gov.uk along with the required supporting documentation and evidence that the required application fee has been paid.
- 3.6 Applications for the grant of a licence must be accompanied by:
- A plan showing the location of the premises shown by a red line, so the application site can be clearly identified
 - A plan clearly showing the proposed area covered by the licence in relation to the highway, if not to scale, with measurements clearly shown. The plan must show the positions and number of the proposed tables and chairs, together with any other items of furniture that they wish to place on the highway. The plan shall include clear measurements of, for example, pathway width/length, building width and any other fixed item in the proposed area.
 - A copy of a current certificate of insurance that covers the activity for third party and public liability risks, to a minimum value of £5 million,
 - Photos or brochures showing the proposed type of furniture (including the means of enclosure such as barriers) and information on potential siting of it within the area applied.

- Evidence of consent from neighbouring frontager(s) to use footway space outside their property (if applicable).

3.7 The application fee is non-refundable in the event that the application is refused or withdrawn or if any licence granted is subsequently surrendered or revoked.

3.8 An application will not be considered complete until the application form, all required documents and the application fee have all been received. The public consultation period will not commence until the day after a **complete** application has been made.

Applying for the RENEWAL of a pavement licence:

3.9 Applications must be made on the Council's standard application form and must be submitted electronically to enquiries@worcsregservices.gov.uk along with the required supporting documentation and evidence that the required application fee has been paid.

3.10 Applications for the grant of a licence must be accompanied by:

- A copy of a current certificate of insurance that covers the activity for third party and public liability risks, to a minimum value of £5 million,

3.11 The application fee is non-refundable in the event that the application is refused or withdrawn or if any licence granted is subsequently surrendered or revoked.

3.12 A renewal application will not be considered complete until the application form, all required documents and the application fee have all been received. The public consultation period will not commence until the day after a **complete** application has been made.

4.0 ADVERTISING AND CONSULTING ON APPLICATIONS

4.1 The Act requires an applicant for a pavement licence to

- (a) On the day the application is made, fix a notice of the application to the premises so that the notice is readily visible to, and can be read easily by, members of the public who are not on the premises, and
- (b) Secure that the notice remains in place until the end of the public consultation period which means the period of 14 days beginning with the day after that on which the application is made.

4.2 A template notice for use by applicants can be found at **Annex A** of this policy.

4.3 Before determining an application, the Council will consult with the following bodies:

- Worcestershire County Council (the highway authority)
- West Mercia Police
- Hereford and Worcester Fire and Rescue Service
- Environmental Health Officers at Worcestershire Regulatory Services
- Bromsgrove Centres' Manager
- Any relevant Business Improvement District (where applicable)
- The relevant Ward Member(s) for the Borough Council

4.1 Details of applications received and the relevant public consultation periods for each application will also be published at:

www.worcsregservices.gov.uk/licensing/pavement-licences.aspx

5.0 DETERMINING APPLICATIONS

5.1 The Council recognises the aims of the Business and Planning Act 2020 and wants to support relevant businesses to achieve growth and economic prosperity in the hospitality sector. The Council will therefore seek to grant applications for licences where possible.

5.2 However, this general approach has to be balanced with the need to ensure that the issuing of pavement licences:

- Does not put public health or safety at risk;
- Does not lead to anti-social behaviour or public nuisance; and,
- Ensures that the public, particularly those with disabilities such as sight impairment, are unhampered when walking along streets.

5.3 The Council will consider all of the relevant circumstances in determining applications and will treat each case on its merits.

5.4 In particular the Council will consider whether the licence holder is able to comply with the both the Council's published standard licence conditions and the statutory licence conditions set out in section 5 (5) and section 5 (6) of the Business and Planning Act 2020.

5.5 The Council's standard licence conditions are shown in full at Annex B.

5.6 The statutory licence conditions are: a no-obstruction condition and a smoke-free seating condition. The statutory licence conditions are shown in full at Annex C.

5.7 When determining individual applications, the Council will also have regard to the guidance issued by the Secretary of State under section 8 of the Business and Planning Act 2020.

5.8 The Council will not grant a licence when doing so would lead to any of the following effects:

- (a) preventing traffic, other than vehicular traffic, from—
 - (i) entering the relevant highway at a place where such traffic could otherwise enter it (ignoring any pedestrian planning order or traffic order made in relation to the highway),
 - (ii) passing along the relevant highway, or
 - (iii) having normal access to premises adjoining the relevant highway,
- (b) preventing any use of vehicles which is permitted by a pedestrian planning order or which is not prohibited by a traffic order,
- (c) preventing statutory undertakers having access to any apparatus of theirs under, in, on or over the highway, or
- (d) preventing the operator of an electronic communications code network having access to any electronic communications apparatus kept

installed for the purposes of that network under, in, on or over the highway.

- 5.9 When considering whether furniture put on a relevant highway by a licence holder pursuant to a pavement licence has or would have the effect referred to in paragraph (a) above, the Council will have regard in particular to the needs of disabled people, and the recommended distances required for access by disabled people as set out in guidance issued by the Secretary of State.
- 5.10 This list is not exhaustive, and the Council may refuse an application on other grounds including (but not limited to) where the granting of the licence would put at risk public health or safety, lead to antisocial behaviour or public nuisance or unreasonably hamper pedestrian's ability to move freely.
- 5.11 The Council will consider any objections or comments received in respect of the application during the public consultation period, whether made by the bodies consulted or any other person, before the application is determined.
- 5.12 Given the important role it undertakes in maintaining the safety of users of the highway, it is extremely unlikely that a licence will be granted or renewed where objections to an application are received from the highway authority, but in all cases the thoughts of all consultees will be considered.
- 5.13 Having considered any objections or comments received in respect of the application, the Council may:
 - a) Grant a licence subject to the standard conditions
 - b) Grant a licence subject to the standard conditions and any other reasonable conditions that are considered appropriate in the circumstances of the case
 - c) Refuse the application

6.0 LICENCES DEEMED TO BE GRANTED

- 6.1 The Council aims to determine all applications within the determination period provided by the Act. That means that applications will be granted or refused within the period of 14 days beginning with the first day after the public consultation period has ended.
- 6.2 However, if the Council does not make a determination by the end of the determination period, section 3 (9) of the Act provides that the licence for which the application was made is deemed to be granted by the Council to the applicant.

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7.0 LICENCE DURATION AND CONDITIONS

Duration of licences

- 7.1 Unless previously surrendered or revoked, all licences granted by the Council will be valid for a period of two years and will then expire.
- 7.2 Unless previously surrendered or revoked, any licence deemed granted under section 3 (9) of the Act will be valid for two years starting with the first day after the determination period.

Licence conditions

- 7.3 All pavement licences whether granted or deemed granted, will be subject to the Council's published standard conditions. These are published at **Annex B** to this policy statement.
- 7.4 All pavement licences whether granted or deemed granted, will also be subject to the statutory conditions provided for under section 5(4) of the Business and Planning Act 2020. The statutory conditions are shown at **Annex C** to this policy statement.
- 7.5 In addition to the standard conditions and statutory conditions, further reasonable conditions may be attached to individual licences as the Council considers appropriate in the circumstances of the case having regard to any comments or objections received during the public consultation period. The need for further conditions beyond the standard conditions will be considered on a case-by-case basis.

8.0 COMPLIANCE AND ENFORCEMENT

Putting removable furniture on part of a relevant highway without permission

- 8.1 In cases where removable furniture which would normally be permitted by a pavement or other licence has been placed on a relevant highway without the required licence, appropriate advice will be given to the relevant business on how they can apply for a licence.
- 8.2 If no licence application is received and the furniture continues to be placed on a relevant highway without the required licence, the Council can give notice requiring the business to remove the furniture before a date specified and to refrain from putting furniture on the highway unless they gain a licence.
- 8.3 If furniture continues to be placed on the highway, in violation of the notice, the Council may remove and store the furniture, recover the costs from the business for the removal and storage of the furniture and refuse to return the furniture until those costs have been paid.
- 8.4 If within 3 months of the notice, the costs are not paid, the authority can dispose of the furniture by sale or other means and retain the proceeds.

Breaches of licence condition

- 8.5 The Council will always seek to rectify any issues arising as a consequence of the activities authorised by a pavement licence by engaging in informal discussions with the licence holder in the first instance.
- 8.6 However, if this informal approach does not resolve the issues in a satisfactory way, then formal action can be taken as detailed below.
- 8.7 If the Council considers that a licence-holder has breached any condition of the licence, the authority may—
- (a) revoke the licence, or
 - (b) serve a notice on the licence-holder requiring the taking of such steps to remedy the breach as are specified in the notice within such time as is so specified.
- 8.8 If a licence-holder on whom an enforcement notice is served fails to comply with the notice, the Council may—
- (a) revoke the notice, or
 - (b) take the steps itself and recover the costs of doing so from the licence holder.

8.9 The Council may also revoke the licence if it considers that—

- (a) some or all of the part of the relevant highway to which the licence relates has become unsuitable for any purpose in relation to which the licence was granted or deemed to be granted,
- (b) as a result of the licence—
 - (i) there is a risk to public health or safety, or
 - (ii) anti-social behaviour or public nuisance is being caused or risks being caused,
 - (iii) the highway is being obstructed (other than by anything done by the licence-holder pursuant to the licence),
- (c) anything material stated by the licence-holder in their application was false or misleading, or
- (d) the licence-holder did not comply with the duty to advertise their application.

8.10 The Council may also, with the consent of the licence-holder, amend a licence if it considers that—

- (a) some or all of the part of the relevant highway to which the licence relates has become unsuitable for any purpose in relation to which the licence was granted or deemed to be granted,
- (b) as a result of the licence—
 - (i) there is a risk to public health or safety, or
 - (ii) anti-social behaviour or public nuisance is being caused or risks being caused,
 - (iii) the highway is being obstructed (other than by anything done by the licence-holder pursuant to the licence),
- (c) a no-obstruction condition of the licence is not being complied with.

8.11 All enforcement activity will be undertaken in line with the principles set out in the Regulator's Code and with regard to any relevant enforcement policies in place.

9. EQUALITIES

- 9.1 Under the Equality Act 2010 it is against the law to discriminate against anyone because of age, gender reassignment, being married or in a civil partnership, being pregnant or on maternity leave, disability, race including colour, nationality, ethnic or national origin, religion or belief, sex, or sexual orientation.
- 9.2 The Equality Act 2010 requires public bodies to have due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations between different people when carrying out their activities.
- 9.3 The licensing authority has had regard to this duty when publishing this statement of policy and will have regard to the duty when determining applications for pavement licences under the Business and Planning Act 2020.
- 9.4 The licensing authority will also look to discharge this duty by making suitable arrangements where requested to provide information in a format that meet the requirements of those with special needs such as large type, audio information and information in foreign languages. Specific needs will be dealt with on an individual basis.
- 9.5 In the design and layout of their premises and any areas of the highway used to place furniture, applicants and licence holders are encouraged to consider access and facilities for customers with protected characteristics.
- 9.6 Any person who is concerned that a premises is failing to comply with the Equality Act should make their complaint to the premises in the first instance. Advice can also be sought from the Equality Advisory Support Service (EASS) - www.equalityadvisoryservice.com

10. RIGHTS OF APPEAL

- 10.1 The Business and Planning Act 2020 does not provide any statutory right of appeal against a decision to refuse or revoke a pavement licence. Nor is there a statutory right of appeal against any enforcement notice served on a licence holder.
- 10.2 However, clear and justifiable reasons will always be provided if a licence is refused or revoked, or if an enforcement notice is served on a licence holder.

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11. PLANNING PERMISSION

- 11.1 If a pavement licence is granted, or deemed to be granted, the applicant will also benefit from deemed planning permission to use the land for anything done pursuant to the licence while the licence is valid and remains in force.

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12. HAZARDS OR OBSTRUCTIONS ON THE HIGHWAY

- 12.1 Notwithstanding the grant or deemed grant of a licence, the highway authority reserves the right to remove items that present a hazard or obstruction to highway users.

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ANNEX A – TEMPLATE PUBLIC NOTICE

BUSINESS AND PLANNING ACT 2020

NOTICE OF APPLICATION FOR A PAVEMENT LICENCE

I / We(1)

Do hereby give notice that on (2)

I / we have applied to Bromsgrove District Council for a pavement licence at:

.....
..... (3)

Known as..... (4)

The application is for:
.....
..... (5)

Any person wishing to make representations to this application may do so by writing to enquiries@worcsregservices.gov.uk by:

..... (6)

The application and information submitted with it can be viewed at:
www.worcsregservices.gov.uk/licensing/pavement-licences.aspx

Signed

Date (7)

Guidance notes on completing this notice of application.

Complete the notice by putting the following information in the numbered spaces:

- (1) Name of the applicant
- (2) Date the application is made (submitted)
- (3) Postal address of the premises
- (4) Name the premises is known by
- (5) Brief description of application (e.g outdoor seating to the front of the premises for serving of food and drink]).
- (6) Last date for representations being the date 14 days after the date the application is submitted to the local authority.
- (7) The date the notice was placed (must be the same date as (2) above)

On the same day that the application is made, a completed copy of this notice must be fixed to the premises so that it is readily visible to, and can be read easily by, members of the public who are not on the premises, and secure that the notice remains in place until the end of the public consultation period.

Failure to comply this requirement may lead to the revocation of any licence granted or deemed granted.

ANNEX B – STANDARD CONDITIONS FOR PAVEMENT LICENCES

1. The licence must only be used for the purpose of placing removable furniture on the highway to sell or serve food or drink and/or allow it to be used by people for consumption of food or drink supplied from, or in connection with the use of the licence holder's business premises.
2. Furniture may only be placed within the area of the highway identified on the plan that is annexed to the licence.
3. The licence holder must ensure that furniture is positioned in such a way so that staff can service the space regularly for cleaning and other purposes, in a manner that does not compromise their health and safety.
4. Any furniture shall be kept in a clean, safe and well maintained condition. Any canopies or umbrellas must be adequately secured.
5. Any furniture must be made of suitable materials to ensure that it cannot easily be pushed or blown over by the wind and thereby cause obstruction. Lightweight plastic "patio" style furniture is therefore not permitted.
6. Clear routes of access along the footway must be maintained, taking into account the needs of disabled people, and the recommended minimum footway widths and distances suggested by the Department for Transport "Inclusive Mobility" guidance document. A minimum useable footway width of 1.5m must be maintained for pavement users including those using mobility aids such as walking frames, wheelchairs and mobility scooters.
7. The licence holder shall not make excavations or indentations of any description whatsoever in the surface of the highway or place or fix any equipment of any description in the said surface.
8. Unless otherwise specified on the licence, the licence holder must not place any furniture on the highway in pursuance of this licence before 07:00hrs on any day and must remove all furniture placed on the highway in pursuance of this licence when the premises closes or by 23:00hrs on any day, whichever is the earliest.
9. Unless otherwise specified on the licence, all furniture must be stored securely away from the highway between the hours of 23:00hrs and 07:00hrs and at all other times when the premises is closed.
10. The licence holder must observe and comply with any direction made by a Police Officer, Fire and Rescue Officer, or authorised officer of the local authority in relation to the use of the highway, including any direction to remove furniture from the highway. These public bodies will not be liable for any loss of earnings arising as a result of the licence holder being required to comply with such a direction.
11. The licence holder must at all times hold a current certificate of insurance that covers the activity for third party and public liability risks, to a minimum value of £5 million.
12. The area of the highway covered by the licence must be kept clean and tidy at all times. This will include washing down the area, and removing any refuse and litter on the highway in the vicinity of the removable furniture.

13. The licence holder shall not use or allow to be used any music playing, music reproduction or sound amplification apparatus or any musical instruments, radio, or television receiving sets in the area of the highway covered by the licence.
14. The licence holder must not allow customers using the area to engage in anti-social or disorderly behaviour.
15. The licence holder must ensure that the area covered by the licence is monitored regularly by staff to ensure that the conditions above are being adhered to.
16. If the premises does not hold a premises licence under the Licensing Act 2003 which authorises the sale of alcohol, the licence holder must not allow the sale or consumption of alcohol within the licensed area.
17. Any sales of alcohol within the licensed area must be authorised under the Licensing Act 2003.
18. A copy of the licence must be kept on the premises at all times and be available for inspection by a police officer or authorised officer of the local authority.

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ANNEX C – STATUTORY CONDITIONS FOR PAVEMENT LICENCES

1. Anything done by the licence holder pursuant to the licence, or any activity of other persons which is enabled by the licence, must not have an effect specified in section 3(6). These effects are:
 - (a) preventing traffic, other than vehicular traffic, from—
 - (i) entering the relevant highway at a place where such traffic could otherwise enter it (ignoring any pedestrian planning order or traffic order made in relation to the highway),
 - (ii) passing along the relevant highway, or
 - (iii) having normal access to premises adjoining the relevant highway,
 - (b) preventing any use of vehicles which is permitted by a pedestrian planning order or which is not prohibited by a traffic order,
 - (c) preventing statutory undertakers having access to any apparatus of theirs under, in, on or over the highway, or
 - (d) preventing the operator of an electronic communications code network having access to any electronic communications apparatus kept installed for the purposes of that network under, in, on or over the highway.
2. Where the furniture to be put on the relevant highway consists of seating for use by persons for the purpose of consuming food or drink, the licence-holder must make reasonable provision for seating where smoking is not permitted.

ANNEX D – TABLE OF DELEGATED FUNCTIONS

	Licensing Committee	Licensing Sub-Committee	Head of Regulatory Services
Approval and revision of Policy on Pavement Licensing	X		
Determination of application for grant of a pavement licence (including any specific conditions)			X
Determination of application for renewal of a pavement licence (including any specific conditions)			X
Decision to revoke a pavement licence		X	
Decision to serve notice on the licence holder under section 6 of the Business & Planning Act 2020			X
Decision to amend a licence with the consent of the licence holder under section 6(4) of the Business & Planning Act 2020			X
Decision to serve notice on a person under section 7A of the Business and Planning Act 2020			X