

BUSINESS AND PLANNING ACT 2020

CONSULTATION ON DRAFT POLICY ON PAVEMENT LICENSING

Relevant Portfolio Holder	Councillor K 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 have previously approved a draft Policy on Pavement Licensing for the purpose of consultation with relevant stakeholders and are now asked to consider the responses received during the consultation exercise and then to approve and adopt a finalised Policy on Pavement Licensing.

2. RECOMMENDATIONS

2.1 Members are asked to RESOLVE;

To approve and adopt the draft Policy on Pavement Licensing shown at Appendix 2 to take effect immediately.

3. KEY ISSUES

Financial Implications

- 3.1 The costs involved in carrying out the consultation were 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 was prepared by officers and presented to the Licensing Committee on 22nd July 2024. 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 Members of the Licensing Committee resolved to approve the draft Policy on Pavement Licensing for the purpose of consultation with relevant stakeholders, subject to some minor amendments. These included the inclusion of Parish Councils in the list of those who would be consulted on applications.
- 3.22 The consultation exercise was undertaken between 12th August 2024 and 25th October 2024. The consultation exercise was facilitated using an online survey tool that asked respondents for their views and suggestions in respect of the following:
- 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
- 3.23 The consultation survey was sent to the following:
- Highway Authority – Worcestershire County Council
 - West Mercia Police Licensing Team
 - Hereford and Worcester Fire & Rescue Service
 - Environmental Health (WRS)
 - Centres Manager for Bromsgrove District Council
 - Planning Department at Bromsgrove District Council
 - Worcestershire Safeguarding Children Partnership
 - Director of Public Health (Worcestershire County Council)
 - Trading Standards (Worcestershire County Council)
 - Engagement, Equalities and Policy Team at Bromsgrove District Council

- Sensory Impairment Team at Worcestershire County Council
 - District Councillors
 - Parish Councils
 - Representative bodies of local businesses
 - National trade bodies for hospitality businesses
 - Local and national representative bodies for those with disabilities
 - Those who hold or have applied for pavement licences from the Council previously
- 3.24 A link to the consultation survey was hosted on the consultations page of the Council's website and publicised via social media channels.
- 3.25 In total nine people responded to one or more of the questions asked in the consultation survey, although only four respondents chose to answer every question.
- 3.26 A summary of the responses received to the questions asked as part of the consultation exercise, can be seen at **Appendix 1**.
- 3.27 Whilst there were only a small number of responses received, the majority of respondents agreed with:
- The process proposed for those applying for grant of a pavement licence
 - The process proposed for those applying for the renewal of a licence
 - The list of those who will be consulted on applications
 - The approach to be taken when determining applications
 - The granting of licences for a period of two years
 - The list of standard conditions for pavement licences
 - The proposed approach to compliance and enforcement
- 3.28 In respect of those who are consulted on applications, one respondent suggested that letters should be sent to residential addresses when an application is received. Officers do not believe that this is necessary as the applicant has to display a public notice at the premises. The costs and time constraints involved also make this something that officers cannot support.
- 3.29 In respect of the duration of licences, one respondent suggested that the licences should be issued for one year at a time, with another suggesting they should be granted indefinitely. The relevant legislation does not permit a licence to be granted for more than two years.

- 3.30 Officers believe that granting licences for the maximum two-year period will reduce administrative and financial burdens on businesses and the licensing authority. Members are also reminded that the licensing authority has the power to revoke licences where the circumstances justify such a decision.
- 3.31 One respondent also suggested that small local businesses should be allowed to place a small amount of furniture adjacent to their property (not on the highway) without a licence. Members are reminded that no pavement licence is required if the furniture concerned is not being placed on part of a relevant highway.
- 3.32 Having considered the responses received during the consultation exercise, officers do not believe that the Council needs to make any further amendments to the draft Pavement Licensing Policy that was consulted upon.
- 3.33 Members are therefore now asked to approve and adopt the draft Policy on Pavement Licensing shown at **Appendix 2** to take effect immediately.

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 - Summary of Consultation Responses

Appendix 2 - Draft Policy on Pavement Licensing

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