

Report to Environment and Licensing Committee

Subject: Pavement Licences - The Levelling Up and Regeneration Act 2023 making permanent the provisions set out in the Business and Planning Act 2020

Date: 3rd September 2024

Author: Director of Place

Purpose

To seek approval for the policy and fee structure for pavement licensing.

Recommendation

- THAT:**
1. Members approve the pavement licensing policy attached at Appendix 1.
 2. Members approve the pavement licensing fee structure contained in the report.

1 Background

- 1.1 At the meeting held on 11th June 2024 it was resolved to delegate the Functions under Part 1 of the Business and Planning Act 2020 ("the B&P 2020 Act") as amended by the Levelling Up and Regeneration Act 2023 ("LUR 2023 Act") to Director level.
- 1.2 The B&P 2020 Act received Royal Assent and came into effect on 22nd July 2020. The Act allowed operators of businesses selling food and drink to apply to their local authority for a pavement licence, which gave authorisation to put certain removable furniture such as tables and chairs on the highway adjacent to their premises to sell food and drink from and/or for their customers to use for the consumption of food and drink.
- 1.3 Under the B&P 2020 Act, the pavement licensing regime was operated by the appropriate local authority, which is the district council in whose area relevant premises are situated. This was a temporary provision aimed to support and enable businesses selling food and drink to be able to remain open and serve customers during the Covid-19 pandemic whilst ensuring the business adhered to the then social distancing restrictions and guidance. The provisions were initially until the end of September 2020 and have been extended annually until the end of September 2024 to continue to support food and drink businesses that

had been affected by the pandemic and during the current cost of living crisis.

- 1.4 The LUR 2023 Act makes permanent the provisions set out in the B&P Act from 31st March 2024. This will continue to provide much needed income for businesses and continue to protect as many hospitality jobs as possible.
- 1.5 The LUR 2023 Act also introduces several changes to the pavement licensing regime including increasing the fee cap for new and renewal applications from £100 to £500 for new applications and £350 for renewal applications. The consultation period for applications has been increased from 7 days to 14 days (excluding public holidays) and the determination period has been increased from 7 days to 14 days. The length of a licence has increased to up to two years from one year and local authorities have been given new enforcement powers regarding unlicensed premises.
- 1.6 Attached at Appendix 1 is draft pavement licensing policy which includes details of how the Council intends to process applications. This is an online only application process and as well as completing an application form, detailing the times of the proposed licence and the type of furniture to be placed on the highway, the applicant is also required to submit a plan of the proposed licensing area, a certificate of public liability insurance and images of the proposed furniture. The Licensing Officer may conduct a visit to the premises to check the extent of the licensing area to ensure that all accessibility issues are complied with and that the proposed licensing area does not pose a health and safety risk.
- 1.7 The policy also includes some amendments to the standard conditions previously approved in 2020. These have been updated to reflect the amendment to the legislation, the current pavement licensing guidance and considers the last four years' experience the Licensing Team have had in granting this type of licence. Also included are the two mandatory conditions provided by the legislation regarding no smoking areas and accessibility.
- 1.8 The policy also includes details as to how the Council will enforce against unlicensed pavement furniture and breaches of the terms or conditions of a licence. It also includes a process for the applicant or licence holder to make representations regarding decisions to refuse or revoke a licence.
- 1.9 Under the B&P Act 2020 local authorities have been given new powers of enforcement and guidance as to how to implement these powers was published by the Government on 2nd April 2024. These powers include revoking a licence for breach of conditions or the terms of the licence, misleading statements in an application or if it comes to light that there was a failure to display a notice of application on the premises. They also include amending licence conditions where there have been changes to the highway around the licenced area or if any health and safety issues have been raised during the period of the licence. The

Council can also refuse a licence if the area is not considered a suitable area for a pavement licence for reasons such as accessibility and health and safety.

- 1.10 In addition, the B&P Act 2020 provides a process to take enforcement action against a premises which places unlicensed furniture on the highway with the intent of it being used for the consumption of food and drink. This includes giving a notice requiring the business to remove the furniture within a timeframe and if this is not complied with the Council can remove and store the furniture, the costs of which is charged to the business, and refuse to return the furniture until these costs are paid. If within 3 months the costs are not paid the Council can dispose of the furniture and retain the proceeds.
- 1.11 If issues of non-compliance are identified officers will investigate and review the terms of the licence and decide whether the licence should be amended, with the consent of the licence holder, or revoked. Any person who is aggrieved by the decision to revoke a licence can make representations to the Community Protection Manager whose decision will be final.
- 1.12 The fixing of fees for pavement licensing is a function of the Environment and Licensing Committee as laid out in the Local Authorities (Functions and Responsibilities) (England) Regulations 2000. The fees are solely to cover the reasonable costs of administering the application, whether the application is approved or not.
- 1.13 When calculating the proposed fees, the Finance and Licensing Teams considered the costs incurred and the estimated time taken for each step of the process of administering a licence. This included inspection of any premise, the administration of recording the application and issuing the licence and any advice given during the process to ensure that the legal requirements are met. The proposed fees are in the table below:

Pavement Licence	Fee
New 2 year licence	£290.00
New 1 year licence	£260.00
Renewal 2 year licence	£118.00

- 1.14 Although the guidance recommends that in most cases new licences should be granted for 2 years there may be cases where officers consider a one year licence is more appropriate where there may be concerns as to the impact of the licensable area on the local environment or for any other reasonable cause.

2. Proposal

- 2.1 It is proposed that the pavement licensing policy attached at Appendix 1 be approved.
- 2.2 It is proposed that the pavement licensing fees in the report at paragraph 1.13 be approved.

3 Alternative Options

- 3.1 To not approve the policy would result in a lack of framework for officers when dealing with pavement licensing applications and would result in a lack of information, consistency and transparency for applicants and the public when seeking information regarding pavement licensing.
- 3.2 To not approve the fees would result in the pavement licensing process not being operated on a cost recovery basis resulting in a deficit in the budget and a cost to the Council.

4. Financial Implications

- 4.1 It is unclear how this new process will affect the Council in terms of workload as up to the date this was made permanent the issuing of pavement licences for food and drink premises were still administered between the Council under the B&P Act 2020 and the Nottinghamshire County Council under the Highway Act 1980. Officers have sort information from Nottinghamshire County Council as to the numbers of licences involved but initially the process will sit with the Licensing Team in Public Protection until a full assessment of the addition workload can be undertaken.
- 4.2 The fees have been set on a cost recovery basis considering the application and decision-making process outlined in the Act, Government guidance and the proposed pavement licensing policy. These fees will be reviewed on an annual basis and any changes will be brought for Committee approval. At this stage it is not intended to recruit any additional resources for this process and any costs associated with the processing of applications will be met from existing budgets. However, this will be subject to ongoing assessment when the impact of this permanent process becomes apparent.

5 Legal Implications

- 5.1 The statutory basis for the Council implementing the pavement licensing regime is laid out in the report. Committee has previously delegated authority for undertaking the functions under the B&P Act 2020 to Director.
- 5.2 Although not a statutory requirement it is advisable to have a policy dealing with pavement licences to enable consistency and transparency when dealing with applications and any enforcement/compliance action.

5.3 There is no statutory appeal process for refusal or revocation of a pavement licence, but Judicial Review of any decision will always be open to the aggrieved applicant. To protect the Council against such reviews it is advisable to have an option for representations to be made and considered by a manager and to ensure all decisions are fully reasoned and documented.

5.4 Section 2(1)(c) of the B&P Act 2020 gives the power for the Council to charge such a fee as the local authority may require for the administration of the application, subject to the limits highlighted at paragraph 1.5 of the report. The fee must be levied on a costs recovery basis.

6. **Equalities Implications**

The Equality Impact Assessment is attached at Appendix 2 and was previously presented to Members at the meeting on 11th June 2024.

7 **Carbon Reduction/Environmental Sustainability Implications**

A Carbon Impact Assessment is attached at Appendix 3.

8 **Appendices**

Appendix 1 – Pavement Licence Policy

Appendix 2 – Equality Impact Assessment

Appendix 3 – Carbon Impact Assessment

9 **Background Papers**

None.

Statutory Officer approval

Approved by the Chief Financial Officer Date:

Drafted by the Head of Environment