

RIBBLE VALLEY BOROUGH COUNCIL REPORT TO LICENSING COMMITTEE

meeting date: 20 OCTOBER 2020
 title: TEMPORARY PAVEMENT LICENCES
 submitted by: HEAD OF LEGAL AND DEMOCRATIC SERVICES
 principal author: MAIR HILL

1 PURPOSE

1.1 To information committee of the provisions put in place for the issue of temporary pavement licences pursuant to the Business and Planning Act 2020 (“the **Act**”).

1.2 Relevance to the Council’s ambitions and priorities

- Community Objectives - }
 - Corporate Priorities - }
 - Other Considerations - }
- Consideration of these issues will promote the Council’s aim to be a well-managed Council.

2 BACKGROUND

2.1 The Act came into force on 22 July 2020. Sections 1 to 10 of the Act introduce provisions for the Council to issue Pavement Licences. These are temporary provisions which will remain in place until 3 September 2021. Pavement Licences are ordinarily licenced pursuant to Section 7A of the Highways Act 1980 and are therefore issued by the County Council as Highways Authority. The Act however introduced a new regime under which it would be the Council’s responsibility to administer.

2.2 The new process provides a cheaper, easier and quicker way for businesses to obtain a licence. The fee for applying for a licence under the new process, is capped at £100 and the consultation period is 5 working days (excluding public holidays). It is currently a minimum of 28 calendar days under Part 7A.

2.3 If the local authority does not determine the application before the end of the determination period (which is 5 working days beginning with the first day after the public consultation period (excluding public holidays), the licence is deemed to have been granted for a year (but not beyond 30 September 2021) and the business can place the proposed furniture such as tables and chairs within the area set out in the application for the purpose or purposes proposed.

2.4 A business which uses (or proposes to use) premises for the sale of food or drink for consumption (on or off the premises) can apply for a licence. Businesses that are eligible include: public houses, cafes, bars, restaurants, snack bars, coffee shops, and ice cream parlours.

A licence permits the business to use furniture placed 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 premises.

- 2.5 The furniture which may be used is:
- counters or stalls for selling or serving food or drink;
 - tables, counters or shelves on which food or drink can be placed;
 - chairs, benches or other forms of seating; and
 - umbrellas, barriers, heaters and other articles used in connection with the outdoor consumption of food or drink.
- 2.6 This furniture is required to be removable. The Government's guidance states that Local authorities should be pragmatic when determining what is 'removable' but in principle this means it is not a permanent fixed structure, and is able to be moved easily, and stored away of an evening.
- 2.7 Licences can only be granted in respect of highways listed in section 115A (1) Highways Act 1980. Generally, these are footpaths restricted to pedestrians or are roads and places to which vehicle access is restricted or prohibited. Highways maintained by Network Rail or over the Crown land are exempt (so a licence cannot be granted).
- 2.8 It is important to note the grant of a pavement licence only permits the placing of furniture on the highway. Other regulatory frameworks still apply such as the need for alcohol licenses and the need to comply with registration requirements for food businesses.
- 2.9 If the applicant has a licence to serve alcohol on-premises temporary amendments to the Licensing Act 2003 (which take effect pursuant to Section 11 of the Act) will allow them to sell alcohol for consumption off the premises without needing to apply for a variation of their licence.
- 2.10 Once a 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.
- 2.11 If a condition imposed on a licence (either by the local authority) or nationally is breached the local authority will be able to issue a notice requiring the breach to be remedied and the authority can take action to recover any costs. The authority may revoke a licence in the following circumstances:
- For breach of condition, (whether or not a remediation notice has been issued) or
 - There are risks to public health or safety – for example by encouraging users to breach government guidance on social distancing by placing tables and chairs too close together;
 - the highway is being obstructed (other than by anything permitted by the licence);
 - there is anti-social behaviour or public nuisance – for example, the use is increasing the amount of noise generated late at night and litter is not being cleaned up;

- it comes to light that the applicant provided false or misleading statements in their application – for example they are operating a stall selling hot food and had applied for tables and chairs on which drinks could be consumed; or
- the applicant did not comply with the requirement to affix the notice to notify the public for the relevant period.

2.12 The local authority may also revoke the licence where all or any part of the area of the relevant highway to which the licence relates has become unsuitable for any purpose for which the licence was granted or deemed to be granted. For example, the licensed area (or road adjacent) is no longer to be pedestrianised. It is good practice for local authorities to give reasons where these powers are used.

3 ISSUES

3.1 The Council had to be in a position to process and grant such licences by the time the Act received royal assent. Due to the extremely short period in which the arrangements had to be in place approval was sought from Chief Executive pursuant to the delegation made at Emergency Committee on 7 May 2020.

3.2 The following arrangements were approved:

Officer delegations

3.3 Due to the fast track nature of the process it was approved that determination of applications be delegated to the Head of Legal and Democratic Services.

Fees

3.4 The Act provides that local authorities must set a fee, but that it must not exceed £100. The Council assessed the time which would be involved in administering each application and based on this analysis considers the fee was set at **£100**.

Duration of Licence

3.5 If a local authority determines an application before the end of the determination period (which is 5 working days, beginning with the first day after the public consultation period, excluding public holidays) the authority can specify the duration of the licence, subject to a minimum duration of 3 months. The Government's guidance states that the expectation is that local authorities will grant licences for 12 months or more unless there are good reasons for granting a licence for a shorter period such as plans for future changes in use of road space.

3.6 If a licence is 'deemed' granted because the authority does not make a decision on an application before the end of the determination period, then the licence will be valid for a year. A licence granted or deemed to be granted will not be valid beyond 30 September 2021.

- 3.7 It was determined that the Council follow this guidance and issue licences for 12 months unless there are good reason for granting licences for a shorter period, or the applicant requests a shorter duration.

Conditions

- 3.8 The Act stipulates very limited mandatory conditions; however, the Council is permitted to impose additional local conditions. A number of additional local conditions were approved which are set out in **Appendix 1**.

Application Form

- 3.10 Section 2 of the Act provides that an application to the local authority must:
- specify the premises and, the part of the relevant highway to which the application relates;
 - specify the purpose (or purposes) for which the furniture will be used which must be to sell or serve food or drink, and/or for use by other people for the consumption of food or drink. In both cases the food or drink must be supplied from, or in connection with relevant use of the premises;
 - specify the days of the week on which and the hours between which it is proposed to have furniture on the highway;
 - describe the type of furniture to which the application relates, for example: tables, chairs, and/or stalls;
 - specify the date on which the application is made;
 - contain or be accompanied by such evidence of public liability insurance in respect of anything to be done pursuant to the licence as the authority may require; and
 - contain or be accompanied by such other information or material as the local authority may require.
- 3.11 The Council is permitted to require an application to be submitted on a standard application form. A copy of the Council's application form can be found at https://ribblevalleygov-self.achieveservice.com/service/apply_for_a_temporary_pavement_licence

Appeal

- 3.12 There is no statutory appeal process under the Act, however, the Guidance suggests that local authorities may wish to consider the scope for an internal review process, for example permitting appeals to their Licensing Committee. It was approved that the Council should have a review procedure and that reviews would be determined by the Chief Executive in consultation with the Chair of the Licensing Committee of the Council.

4 RISK ASSESSMENT

- 4.1 The approval of this report may have the following implications

- Resources – Increased resources will be required to implement and run the new licensing regime.
- Technical, Environmental and Legal – The Council will have responsibility for both the licensing and enforcement of the Act.
- Political - No implications identified.
- Reputation –The implementation and enforcement of the regime will enhance the Council's reputation.
- Equality & Diversity – No implications identified.

5 CONCLUSION

5.1. Committee should note the content of the report.

MAIR HILL
HEAD OF LEGAL AND DEMOCRATIC SERVICES

MARSHAL SCOTT
CHIEF EXECUTIVE

BACKGROUND PAPERS

For further information please ask for Mair Hill, extension 4418

REF: MJH/Licensing Committee/20 October 2020



PAVEMENT LICENCE CONDITIONS

National Conditions

The Secretary of State publishes these conditions in exercise of his powers under clause 5(8) of the Business and Planning Act 2020:

Condition relating to clear routes of access:

It is a condition that clear routes of access along the highway must be maintained, taking into account the needs of disabled people, and the recommended minimum footway widths and distances required for access by mobility impaired and visually impaired people as set out in Section 3.1 of [Inclusive Mobility](#).

Guidance on the effect of this condition

1. To the extent that conditions imposed or deemed to be imposed on a pavement licence do not require the licence holder to require clear routes of access to be maintained, taking into account the needs of disabled people and the recommended minimum footway widths and distances required for access by mobility impaired and visually impaired people as set out in Section 3.1 of [Inclusive Mobility](#), the licence is granted subject to those requirements.
2. To the extent that a licence is granted subject to a condition which imposes requirements to maintain clear routes of access that are inconsistent with the requirements set out in this condition this condition is not imposed on the licence.

Smoke -free seating condition

It is a condition that, 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.

Local Standard Pavement Licence Conditions

1. Being the licence holder of a Pavement Licence does not imply an exclusive right to the area of public highway. The licence holder must be aware that the Council and others (e.g. police, highways authority, statutory undertakers) will need access at various times (including emergencies) for

maintenance, installation, special events, improvements etc or any other reasonable cause. This may mean that the pavement licence will need to cease operating and/or be removed for a period of time. On these occasions there would be no compensation for loss of business.

2. The Council requires evidence that the licence holder has Public Liability Insurance for the operation of the Pavement Licence. This must indemnify the Council and Lancashire County Council against all claims for injury, damage or loss to users of the public highway, arising from the use of the highway for the permitted purpose. The minimum level of indemnity must be £5 million in respect of any one incident.

3. Tables and chairs and other furniture permitted under the licence must not be placed in position outside of permitted times. When the licence is not in use, all tables and chairs and other furniture must be stored securely inside a premises away from the highway.

4. The Council and/or Lancashire County Council are empowered to remove and store or dispose of furniture from the highway, at the cost of the licensee, if it is left there outside the permitted hours, or should any conditions of the licence be ignored. The Council will not be responsible for its safekeeping.

5. The licence holder is not to make or cause to be made any claim against the Council in the event of any property of the licence holder becoming lost or damaged in any way from whatever cause.

6. An unimpeded pedestrian route must be maintained at all times for people wishing to use the footway as per the National Licence Conditions.

7. The method of marking the boundary of the licensed area must be agreed between the licence holder and the Council's Licensing Department. Whatever method is agreed a 2 metre clear walkway must be maintained for the use of pedestrians.

8. Emergency routes to the premises and adjacent buildings must not be obstructed by the pavement furniture, which should not, in normal circumstances, extend beyond the width of the premises frontage. A clear direct pathway of at least 1.2 metres shall be maintained to allow entry and exit from buildings and premises.

9. Tables and chairs should be of an approved type and should be kept in a good state of repair. Furniture should be placed so as not to obstruct driver sightlines, or road traffic signs. Placement of tables and chairs must allow pedestrians to use the footway parallel to the frontage of the premises. Care should be taken in the use of hanging baskets, awnings, protruding umbrellas etc. Alternative items may not be used without first seeking the written authority of the Council.

10. All potential obstructions must be removed from the public highway when the premises are closed to prevent a safety hazard to pedestrians, particularly during the hours of darkness.

11. The licensee should ensure that the area is operated in a safe and orderly manner, thereby ensuring that any safety risk or nuisance to customers, other users of the public highway or any adjacent land or premises, is minimised.
12. The operation of the area must not interfere with highway drainage arrangements.
13. If the area is used during the hours of darkness, suitable and sufficient lighting must be provided to ensure safe use of the area. Any proposals to provide additional lighting to the licensed areas must be agreed with the Highway Authority.
14. All detritus (food and drink remnants, spillages, bottles, cans, wrappers etc) be regularly removed from the footway surface to reduce hazards to pedestrians. The licence holder must make arrangements to regularly check for and to remove litter and rubbish on pedestrian walkways, caused by persons using the licensed area, for a distance of up to 10 metres from the boundary of the licensed area. The licence holder must ensure that any tables are cleared in an efficient manner during the hours of operation. The licence holder must ensure the licensed area and surrounding highway is to be washed down at the completion of each day's usage using a method sufficient to remove food debris, grease and other spillages that may occur.
15. The licence holder is not permitted to attach any fixtures, or make excavations of any kind, to the surface of the highway without prior written approval. Any costs incurred as a result of damage to the highway, due to the positioning of tables and chairs etc, will be recovered in full from the licence holder by the Council or the Highway Authority.
16. The Licensee of a premises not licensed under the Licensing Act 2003 or any modification or re-enactment thereof, must not allow the consumption of alcohol within the licensed area.
17. The Licensee of a premises licensed under the Licensing Act 2003 or any modification or re-enactment thereof, must not allow the consumption of alcohol within the licensed area outside the hours in force for the premises itself.
18. The licence must be displayed on the premises with a plan of the agreed layout in clear view.
19. The licensee is responsible for ensuring that the conditions of the licence and any other necessary permissions and regulations are adhered to. The Licence holder is to use the highway solely for the purpose of the licence in line with the provisions of this licence and for no other purpose whatsoever.
20. The licence holder must remove any tables, chairs and other furniture immediately at the end of the licence period or on revocation of the licence.
21. The Council reserves the right to revoke this licence at any time if any of the above conditions are not fulfilled and maintained.

22. Where intoxicating liquor is permitted to be served or consumed in the licensed area, polycarbonate glasses must be used at all times.

23. The use of the licensed area shall not commence before 08.00 hours and shall cease before 21.00 hours each day.