

Appendices
None



NORTHAMPTON
BOROUGH COUNCIL

TAXI AND GENERAL LICENSING COMMITTEE REPORT

Report Title	Business & Planning Act 2020– New Pavement Licences
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AGENDA STATUS: PUBLIC

Committee Meeting Date:
6th August 2020

New Policy Document:
New Pavement Licences

Key Decision: Yes

Directorate:
Customers & Communities

1. Purpose

1.1 Members are requested to delegate the administration, determination and enforcement of Pavement Licences (“A License”), as created by Part 1 of the Business and Planning Act 2020, to the Director of Customer and Cultural Services and to set an application fee for such a licence.

2. Recommendations

2.1 Delegate the authority to issue applications for Licenses, comply with the statutory consultation requirements, determine applications, issue licenses, attach conditions, serve remedial notices, revoke Licences and take any steps in default in order to comply with remedial notices to the Director of Customer and Communities.

2.2 Delegate to the Environmental Health and Licensing Manager the authority to consider non-statutory requests for reconsideration of the refusal of a Licence.

2.3 Set a standard £100 application fee for Licenses.

2.4 Set the duration of any Licence granted as being until 30 September 2021 when Part 1 of the Business and Planning Act 2020 ceases to have effect.

- 2.5 Approve the proposed reasonable conditions at paragraph 3.1.9 below which may be attached to Licenses as considered appropriate upon consideration of each application and delegate to the Director of Customers and Communities the authority to publish those conditions prior to any License being determined in accordance with section 5 of the Act.
- 2.6 Delegate to the Director of Customers and Communities, in consultation with the Chair of the Taxi and General Licensing Committee, the authority to add further reasonable conditions as required in order to ensure public safety, health and amenity as well as accessibility and security.

3. Issues and Choices

3.1 Report Background

- 3.1.1 On 25th June 2020, the Government published the Business and Planning Bill which proposed two significant measures to support business as Covid-19 lockdown measures are relaxed, both of which would affect the Licensing Act 2003 and Planning regimes if enacted.

One of these proposed measures was to create a new temporary "Pavement Licence" to be issued by District Councils authorising the use of removable furniture on part of the public highway adjacent to any premises that are used to sell or serve food and drink supplied from, or in connection with, those premises and by other persons for the purpose of consuming food or drink supplied from or in connection with those premises by

The other proposed measure was to temporarily amend the Licensing Act 2003 so as to direct that any premises holding a Premises Licence authorising "on-sales" of alcohol is deemed to also authorise "off-sales".

- 3.1.2 The Bill completed all three stages in the House of Commons on 29 June 2020 and so the Business and Planning Act 2020 ("the Act") became law on the 22 July 2020.
- 3.1.3 There are existing provisions in the Highways Act 1980 for the issue of "pavement café licences" on a public highway. This process is administered by Northamptonshire County Council and is a fairly lengthy process involving a 28-day consultation period.
- 3.1.4 In enacting Part 1 of the Act, Parliament has created a new stand-alone form of statutory licence called a "Pavement Licence" which authorises public houses, restaurants, cafes or other drinking/eating establishments to put removable furniture on part of the public highway for two purposes:
- a) for the licence holder to sell or serve food or drink from their premises; and
 - b) for customers to consume food or drink supplied from the licence holder's premises.

- 3.1.5 The new pavement licences are to be administered by District/Borough Councils rather than County Councils and have a much quicker turn-around time for a decision to be made than existing Highways Act 1990 or Licensing Act 2003 licences. Once an application is made, there is a statutory 7 day consultation period. A decision whether to grant or refuse a License must then be made no later than 7 days after the consultation period ended, meaning that the entire application process must be completed no later than 14 days from the date the application was sent to the local authority. If a decision is not made within the 14 day period, then a License is automatically deemed to have been granted.
- 3.1.6 The local authority may only grant or reject the application. If granted, the License may be for any or all of the purposes set out in the application and for some or all of the part of the public highway adjacent to the premises. They may also attach “reasonable” conditions to any License as are appropriate.
- 3.1.7 Part 1 of the Act requires two mandatory conditions be attached to any License granted; a no-obstruction condition and a smoke-free seating condition. District/Borough Councils may grant Licenses subject to local “reasonable” conditions which have been published in the District/Borough. There is an expectation these will be supported by a clear justification for the need of a condition, such as evidence raised during the consultation. Conditions might, for example, limit the maximum number of chairs and tables, or type of furniture, time and days of operation with justification for this.
- 3.1.8 It is proposed that the following local conditions may be attached to Licenses in circumstances where Officers delegated to determine applications believe to do so would ensure public, safety, health and amenity as well as accessibility and security:
- 3.1.9 The granting of a street pavement licence may give rise to some issues, for example but not limited to; access by utility companies for urgent repairs, an increase in litter in the outside area, types of furniture that may be unsuitable in high winds etc. The following are proposed conditions to mitigate some of those concerns;
- This permission is not transferrable.
 - This permission will be in force for the dates stated on the consent or, where no limit has been placed on its duration, it will expire on 30th September 2021, unless it is previously surrendered, suspended or revoked.
 - The area so permitted is to be used solely for the purpose of consuming food and drink purchased on the premises. It is strictly forbidden to prepare any food and drink in this area.
 - The tables, chairs and umbrellas shall be of such a design as shall be approved by the Council in writing and be kept in good repair and condition at the permit holder’s expense.
 - Nothing contained in this licence gives the holder permission to make fixtures to or excavations of any kind in the surface of the highway which shall be left entirely undisturbed.

- The licence holder shall make no claim or charge against the Council in the event of the chairs or tables or other objects being lost, stolen or damaged in any way from whatever cause.
- The licence holder shall indemnify the Council against all actions, proceedings, claims demands and liability which may at any time be taken, made or incurred in consequence of the use of the chairs and tables and other objects and for this purpose must take out at the permit holder's expense a policy of insurance approved by the Council in the sum of at least £2 million in respect of any one event and must produce to the Council on request the current receipts for premium payments and confirmation of the annual renewals of the policy.
- No charge shall be made by the licence holder for the use of the chairs and tables and other objects.
- Waste from the licence holder's operations must be disposed of in accordance with their commercial waste agreement.
- Refuse and litter deposited on the highway in the vicinity of the chairs and tables and other objects must be removed each day by the permit holder at their expense or at more frequent intervals as may be required by or under the Environmental Protection Act 1990.
- The licence holder shall remove the tables, chairs and windbreaks from the highway outside the hours permitted by the licence, and immediately if required to do so in order to permit works in or the use of the highway by the Council, the County Council, the police, fire and ambulance services, any utility operator or builders' vehicles, hearses and furniture removal vans.
- The Council reserves the right to add further reasonable conditions as appropriate, suspend or revoke a licence if the licence holder breaches any of the conditions.
- Upon request by the Council, licence holders will be required to clearly define the permitted area by the use of barriers of a type agreed in writing with the Council.
- The licence holder must ensure that anything they do in pursuant of the licence, or any activity of other persons which is enabled by the licence must not cause an obstruction to
 - a) prevent 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) prevent any use of vehicles which is permitted by a pedestrian planning order or which is not prohibited by a traffic order,
 - c) prevent statutory undertakers having access to any apparatus of theirs under, in, on or over the highway, or

- d) prevent 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.

3.1.10 Authorities have the power to revoke a licence where it is shown that the License holder has breached any condition of the License or if;

- 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,
 - (ii) anti-social behaviour or public nuisance is being caused or risks being caused, or
 - (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 display a notice at the premises during the 7 day consultation period.

It is proposed that the Director of Customer and Communities will authorise the Environmental Health & Licensing Manager to make any decisions regarding revocation of Licenses.

3.1.11 Part 1 of the Act removes the requirement for planning permission or a street trading licence, therefore anything which is authorised under the terms of a Licence is deemed to also be authorised under the planning and street trading regimes.

3.1.12 The Act provides for a default no-obstruction and smoke-free seating conditions, and further conditions may be provided for by regulations.

3.1.13 The government has published guidance on the pavement licensing regime and this will be incorporated into the conditions of licensing produced.

3.1.14 The Act includes a consequential amendment to Schedule 1 of the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (“the Regulations”), meaning that the grant of pavement licences is incapable of being an Executive / Cabinet function. It is instead a function of the full Council and Northampton Borough Council’s Constitution explicitly states that all licensing regimes which are not Executive functions by virtue of Schedule 1 of the Regulations are to be the responsibility of the Taxi and General Licensing Committee.

- 3.1.15 Part 1 of the Act does not contain any provisions for statutory appeals against refusal of Licenses in whole or in part. However, the guidance issued by the Government under section 8 of the Act states that it would be good practice for District Councils to create provision for redetermination of any unsuccessful application by an independent person within that Council.
- 3.1.16 It is therefore proposed that the Licensing Team Leader and Licensing officers have will be authorised by the Director of Customers and Communities to make decisions whether to grant or refuse licences and to enforce Licence conditions.
- 3.1.17 It is also proposed that requests for redetermination of refused applications will considered by the Environmental Health & Licensing Manager, as authorised by the Director for Customers and Communities, in line with the Council's complaints process, with the resultant option for the applicant to escalate their complaint to the Local Government and Social Care Ombudsman, to ensure that decision making is robust.
- 3.1.18 The proposed delegation of decision making to Officers will enable decisions to be made within the required 7 day period after consultation.
- 3.1.19 Part 1 of the Act also amends the Licensing Act 2003 to automatically authorise all premises licensed for "on-sales" only to also be licensed for "off-sales". This will permit the sale of alcohol within the area covered by the pavement licence, without the need for the business operator to apply for a variation to their Premises Licence.
- 3.1.20 Part 1 is expressly temporary and any licenses in force as of 30 September 2021 will automatically expire on that date. It is proposed that all Licenses granted will be for the entire period during which Part 1 of the Act remains in force, irrespective of when they are granted.

3.2 Issues

- 3.2.1 Licences will be deemed to be granted if a decision is not made within the required 14 day period following an application being "sent" to the Council. This could result in Licence being granted in inappropriate areas, representing a safety risk, and which will not be subject to any conditions. Procedures are however being put in place to mitigate these risks, including robust application processes.
- 3.2.2 Delegating authorisation to officers for decision making will assist in decisions being made within the required time period.

3.3 Choices (Options)

- 3.3.1 Members can choose not to operate a system of Pavement Licenses in the Borough of Northampton and not to accept applications for the same in accordance with Part 1 of the Act. This choice is **not recommended** as it is likely to result in judicial review proceedings due to a failure to comply with the statutory duty conferred upon District/Borough Councils to operate such a system.

- 3.3.2 Members can choose to operate the system of Pavement Licensing in the same way as Premises, Taxi and Gambling licensing and only delegate certain functions to officers whilst retaining the ability for the Committee or any Sub-Committee to determine applications with representations from consultees or to consider revocations. This choice is **not recommended** because of the statutory requirement to determine all applications for Licenses within 14 days of it being sent to the Council. This would involve Officers having to arrange Committees or Sub-Committees to take place at very short notice to deal with individual applications and would lead to a real risk of deemed grants of Licenses if this cannot be done.
- 3.3.3 Members can choose to delegate all elements of the functions regarding Pavement Licenses to Officers as per the recommendation at paragraph 2 above. This choice is **recommended** as it will ensure that the Council is fulfilling its legal obligations in respect of all of the measures in Part 1 of the Act, especially with regard to making decisions on applications within the statutory 14 day period. It will also enable quick decisions to be made with regard to revocation of any License for any of the statutory reasons for revocation of the same.
- 3.3.4 Members can also choose not to approve the “reasonable” local conditions at paragraph 3.1.9 above, any which may be attached to Licenses in appropriate circumstances. This choice is **not recommended** as it will make it harder for the Council to ensure public safety, health and amenity as well as accessibility and security when granting Licenses
- 3.3.5 Members can choose to approve the “reasonable” local conditions at paragraph 3.1.9 above. This choice is **recommended** as it will ensure that the Council can proactively ensure public safety, health and amenity as well as accessibility and security when granting licenses.
- 3.3.6 Members can choose not to delegate to the Director of Customers and Communities, in consultation with the Chair of the Taxi and General Licensing Committee, the authority to add further reasonable local conditions as required in order to ensure public safety, health and amenity as well as accessibility and security. This choice is **not recommended** as a further report would have to be brought to the Committee and some licenses which are felt to require a specific local condition may have to be granted without it.
- 3.3.7 Members can delegate to the Director of Customers and Communities, in consultation with the Chair of the Taxi and General Licensing Committee, the authority to add further reasonable local conditions as required in order to ensure public safety, health and amenity as well as accessibility and security. This choice is **recommended** as it will enable the Council to react swiftly to ensure reasonable local conditions are attached to Licenses that require conditions which do not form part of the proposed local conditions at para 3.1.9 above.

4. Implications (including financial implications)

4.1 Policy

4.1.1 There are no implications on other policies identified.

4.2 Resources and Risk

4.2.1 Local authorities are permitted to set a fee for an application for the pavement licence and this fee can be no more than £100. It is proposed that the fee is set at £100, to assist with recovery of the costs of processing and enforcing the licences. Some other local authorities have decided to set a zero fee.

4.2.2 Officer resource will be required to implement the provisions, however additional income will be provided from increased fee collection. Additional resources are not considered to be required at this time

4.3 Legal

4.3.1 Section 8 of the Act includes a consequential amendment to Schedule 1 of the Local Authorities (Functions and Responsibilities) (England) Regulations 2000, meaning that the grant of pavement licences cannot be an Executive/Cabinet function and is a function of the full Council.

4.3.2 However, the table at Para 2 of Part 3 of the Council's Constitution concerns responsibility for Council functions. The Taxi and General Licensing Committee (pages 3-5 and 3-6) has responsibility for "Functions relating to licensing and registration set out in Schedule 1 of the Functions Regulations" (meaning the Local Authority (Functions and Responsibilities) Regulations 2000).

4.3.3 The effect of this is that only the Taxi and General Licensing Committee can currently lawfully determine pavement licenses as things stand and this function, or any element of it, would need to be delegated to Officers to enable the Council to receive and determine applications for such Licenses.

4.4 Equality

4.4.1 The Bill will allow businesses to increase customer capacity within their premises which will assist to offset the changes having to be made to occupancy levels due to Covid-19 restrictions. This will hopefully assist with the financial security of these businesses.

4.4.2 There are potential negative impacts on the community. However, there are provisions within Part 1 of the Act which allow a licence to be revoked if it is found to have a negative impact upon safety, public health or nuisance levels.

4.5 Consultees (Internal and External)

4.5.1 Interim Assistant CEO - Peter Baguley
Interim Assistant CEO - Marion Goodman

Community Safety Partnership Manager - Vicky Rockall

Environmental Health & Licensing Manager - Ruth Austen

Finance - Antony Russell

Senior Litigation and Licensing Solicitor - James Chadwick

4.6 Other Implications

4.6.1 None identified

5. Background Papers

5.1 Part 1 of the Business & Planning Act 2020

MHCLG Guidance: Pavement licences (Outdoor Seating Proposal)

Louise Faulkner Licensing Team Leader