

Licensing Committee Meeting	
Meeting Date	4 th October 2022
Report Title	Pavement Licences under the Business & Planning Act 2020
EMT Lead	Emma Wiggins, Director of Regeneration
Head of Service	Charlotte Hudson, Head of Housing and Community Services
Lead Officer	Christina Hills, Licensing Team Leader
Key Decision	No
Classification	Open
Recommendations	<ol style="list-style-type: none"> 1. To give temporary delegated authority to the Community Safety Manager to consider applications made under the Business and Planning Act 2020 and to grant or refuse licences or to take any action permitted under that Act, including but not limited to attaching such conditions as may be required to bring an application into conformity with the criteria. 2. The temporary delegation to remain in place until the provisions relating to Pavement Licences under the Business and Planning Act 2020 cease to have effect.

1 Purpose of Report and Executive Summary

- 1.1 Members are asked to give temporary delegated authority to the Community Safety Manager until 30 September 2023 to consider applications made under the Business and Planning Act 2020 and to grant or refuse licences or to take any action permitted under that Act, including but not limited to attaching such conditions as may be required to bring an application into conformity with the criteria.

2 Background

- 2.1 In response to the Coronavirus pandemic, the Government introduced the Business and Planning Act 2020. This included a temporary provision for a quicker and cheaper process to allow businesses selling food or drink to obtain authorisation from a local authority to place furniture such as tables and chairs on the highway adjacent to their premises known as a Pavement Licence.

- 2.2 This temporary provision was originally due to expire on 30th September 2021, but in July 2021 the Government extended that period until 20th September 2022. On 22nd July 2022, the Government extended this provision again, extending the period during which fast track Pavement Licence provisions continue to apply until 30th September 2023.
- 2.3 The new regulations (The Business and Planning Act 2020 (Pavement Licences) (Coronavirus) (Amendment) Regulations 2022) only apply to applications made on or after 22nd July 2022. All previous licences Pavement Licences expired on 30 September 2022 unless renewed.
- 2.4 Currently, applicants can choose to either apply for a Pavement Licence from Swale BC or for a tables and chairs licence from KCC as the highway authority under Part 7A of the Highways Act 1980. The difference between the 2 regimes is that a Pavement Licence has a 14-day determination period and costs a maximum of £100 whereas a licence from KCC is subject to a 28-day consultation period and currently costs £196.
- 2.5 The Government has made it known that there could be further extensions to Pavement Licence legislation in the future and these licences have also been included into the Levelling Up and Regeneration Bill with the intention of making them a permanent function of local authorities, giving greater enforcement powers to them than at present and to remove the function of tables and chairs licences from highway authorities.
- 2.6 Members will recall that at a meeting of an Extraordinary General Licensing Committee of August 2020 where the Pavement Licence function was first introduced the following was resolved:
- Resolved:**
- (i) That the Pavement Licence conditions and application process and fee as outlined in Appendix I and II and as minuted be agreed.**
- (ii) To give temporary delegated authority to the Resilience and Licensing Manager until 30 September 2021 to consider applications made under the Business and Planning Act 2020 against the criteria set out in the report and appendices and to grant or refuse licences or take any action permitted under that Act, including but not limited to, attaching such conditions as may be required to bring the application into conformity with the criteria.**
- 2.7 Unfortunately, due to an oversight, further temporary delegation was never obtained, and the purpose of this report is to rectify this situation.
- 2.8 The lack of a correct delegation since October 2021 has not caused an issue thus far, as under the terms of the Business and Planning Act 2020 if a Pavement Licence is not granted within the 14-day determination period it is deemed granted by tacit consent. All of the licences we have issued for the last year have been either renewals or applications which we were happy to grant as applied for, so we were able to rely on tacit consent to make the licences lawful.

3 Proposals

- 3.1 Members are requested to give temporary delegated authority to the Community Safety Manager until 30 September 2023 to consider applications made under the Business and Planning Act 2020 and to grant or refuse licences or to take any action permitted under that Act, including but not limited to attaching such conditions as may be required to bring an application into conformity with the criteria.

4 Alternative Options

- 4.1 Members could decide not to give temporary delegated authority to the Community Safety Manager to decide the outcome of Pavement Licence applications. This means that applications would need to be determined on an individual basis by the Licensing Committee.

5 Consultation Undertaken or Proposed

- 5.1 There are no consultation requirements associated with this matter.

6 Implications

Issue	Implications
Corporate Plan	<p>There are indirect links to Priority 1 –</p> <p>Priority 1.6 Implement the visitor economy framework to increase investment, address new visitor demands and grow the value of the sector to the Swale economy.</p> <p>Pavement Licences encourage a ‘café culture’ and thus encourage local people and visitors alike to visit local hospitality venues in our towns which supports the principals of local sustainability.</p>
Financial, Resource and Property	<p>Application fees for Pavement Licences are capped at a maximum of £100, under section 2(1)(c) of the Business and Planning Act 2020. It has been decided to require the maximum permitted application fee of £100 for applications. Burdens Payments have also been paid to the Council by Government for the setting up and administration of Pavement Licences.</p>
Legal, Statutory and Procurement	<p>The Business and Planning Act 2020 gives Council the power to grant pavement licences and deal with them thereafter.</p>

	<p>Unlike certain licensing matters, the Licensing Committee is able to delegate the administration and decision-making process of Pavement Licence functions to officers.</p> <p>Current licences issued by the Council under the pavement licensing regime included an expiry date of 30 September 2022. There are no provisions within the Business and Planning Act 2020 to allow the Council to vary or extend existing licences. As such all existing licence holders will be required to reapply for a licence if they wish to continue to use the pavement areas up to 30 September 2023.</p>
Crime and Disorder	<p>It is important that Swale BC has a robust and accountable regulatory regime in relation to pavement licences in order to ensure fair trading and to protect consumers. Licensing regimes are designed to regulate licensable activities in such a way as to support the prevention/reduction of crime and disorder through the imposition of permissible conditions and appropriate enforcement.</p>
Environment and Climate/Ecological Emergency	<p>There are no direct climate change implications for these proposals. In terms of environmental impact, licence holders will be required to keep the pavement used clean and clear of litter/rubbish and to ensure that tables and chairs and furniture are removed from the pavement by 11pm to prevent noise nuisance to nearby residential properties.</p>
Health and Wellbeing	<p>The pavement licence arrangements require licence holders to make reasonable provision for outside seating where smoking is not permitted. Businesses must continue to have regard to smoke free legislation under the Health Act 2006, and the subsequent Smoke Free (Premises and Enforcement) Regulations 2006.</p>
Safeguarding of Children, Young People and Vulnerable Adults	<p>Whilst there are no specific elements of the pavement licence regime relating to the safeguarding of children and vulnerable adults, licensing regimes in general provide a means of regulating, which links in with safeguarding duties and responsibilities.</p>
Risk Management and Health and Safety	<p>Failure to process and determine applications in a timely manner would lead to a number of deemed approvals with less control over their impact on the environment or the community.</p>
Equality and Diversity	<p>The Council has a legal obligation under section 149 of the Equality Act 2010 to have due regard to eliminate unlawful discrimination and to promote equality of opportunity and good relations between persons of different groups. There are mandatory conditions involved with Pavement Licences which relate to persons with disabilities</p>

Privacy and Data Protection	As Pavement Licences involve the processing of personal data, GDPR and Data Protection Act 2018 principles are followed
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7 Appendices

7.1 None

8 Background Papers

None