



Report of:	Meeting	Date
Mark Billington, Corporate Director Environment	Delegated to Chief Executive under emergency powers	12 January 2021

Business and Planning Act 2020 – Temporary Pavement Licences Policy review

1. Purpose of report

- 1.1 To present a revised policy (**Appendix 1**) on the pavement licensing regime introduced by the Business and Planning Act 2020 (the Act).

2. Outcomes

- 2.1 To agree the revised Policy.

3. Recommendations

- 3.1 To continue to delegate authority to the Head of Environmental Health and Community Safety, to exercise all functions under sections 1 to 10 of the Business and Planning Act 2020.
- 3.2 That the revised policy be approved.
- 3.3 That the existing fees remain unchanged.
- 3.4 To increase the standard licence duration to six months.

4. Background

- 4.1 The Business and Planning Act 2020 received Royal Assent on 22 July 2020, and was part of the Government's package of changes to stimulate the economy to reflect the lifting of restrictions imposed during the pandemic.
- 4.2 The Act amended the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 and is a non-executive function.
- 4.3 The Act specifies a district council as being the appropriate local authority in England to administer temporary pavement licences.

4.4 Government Guidance to accompany the Act was published on 22 July 2020.

5. Key issues and proposals

5.1 The Act introduced a fast tracked application process to authorise business operators to place specified 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.

5.2 Applications are subject to a seven day consultation period starting the day after the application is submitted, and must be determined within seven days immediately following the end of the consultation period. In both instances Christmas Day, Good Friday and Bank Holidays are excluded from these periods.

5.3 The Act requires the council to consult the Highway Authority and such other persons as the authority considers appropriate, when determining applications.

5.4 Tacit consent applies where a valid application for a pavement licence is submitted, but not determined within the statutory timescale. In such cases licences are deemed granted for twelve months, subject to any conditions that the council had published before the day on which the application was made.

5.5 Once granted, or deemed granted, the licence holder is not required to have planning permission or hold a Highways Act permit, and the activity is not classed as street trading for the purposes of any of the various statutes regulating that activity.

5.6 Any business that uses, or proposes to use premises for, or including, a relevant use, may apply for a pavement licence. A relevant use means either or both:

- (a) use as a public house, wine bar or other drinking establishment;
- (b) other use for the sale of food or drink for consumption on or off the premises.

This very wide definition means that premises that do not ordinarily fall within the traditional hospitality sector, such as hairdressers, may apply for a pavement licence in order to create an outdoor waiting room for their clients to have a cup of coffee in before their appointment.

5.7 A pavement licence can only grant an authorisation in relation to a “relevant highway”. This means a highway to which Part 7A of the Highways Act 1980 applies, which includes pavements, highways where a pedestrian planning order is in force and highways whose use by vehicles is prohibited by a traffic order.

- 5.8** The Council may charge a fee for a pavement licence up to a maximum of £100. Wyre set its fees at £100 for a new application and £80 for a renewal last July and this review does not propose to change those fees.
- 5.9** The Act provides for a local authority to grant a pavement licence subject to such conditions as it considers reasonable. This review does not propose to amend the previously agreed conditions.
- 5.10** The Act provides for authorities to issue licences for such a period as they may specify, but that this must not be for less than three months and must not extend beyond 30 September 2021. Alternatively, authorities can leave the duration open-ended, in which case the licence will expire at the end of 30 September 2021 (or later subject to legislative changes).
- 5.11** The Secretary of State wrote to all Local Authorities on 5 March 2021. The letter included the following in respect of pavement licensing.

“These temporary provisions are currently due to expire on 30 September 2021, but to give further certainty to businesses I will be introducing secondary legislation to extend these provisions for a further 12 months, subject to Parliamentary approval.”

We have made clear in the pavement licence guidance that we expect local authorities to grant licences for 12 months or more unless there are good reasons not to, such as plans for future changes in use of road space.

Therefore, unless there are very good reasons, we would expect licences granted under these provisions to continue to apply into this summer so that businesses do not have to reapply or be charged a further application fee when they are able to re-open to serve customers outdoors.”

- 5.12** Increasing the maximum duration of licences to six months, would allow premises that apply this year, to use space created under temporary traffic regulation orders throughout the summer months of 2021.
- 5.13** Wyre Council has only received applications from one premises wishing to use relevant highway for tables and chairs. This premises previously held a Pavement Café Licence issued by Lancashire County Council under Part 7A of the Highways Act. The licence was renewed on application for a further four months in January 2021.
- 5.14** The Act provides for licences to be revoked quickly and easily should problems arise. Concerns that this licensing scheme could encourage a proliferation of uncontrolled outdoor drinking venues with associated disturbance, nuisance and disorder are mitigated by the power to remove permission with immediate effect, where necessary.

- 5.15** The Act does not provide for a statutory appeal process and so decisions to refuse to grant licences, to add conditions, or to revoke licences cannot be challenged in the Courts, except by way of judicial review.
- 5.16** If an applicant is unhappy with the way that they have been dealt with, they would be referred to the council's corporate complaints procedure. However, this is not a local appeal mechanism and does not provide a process to have a properly made decision overturned.

Financial and legal implications	
Finance	Income is difficult to predict owing to the wide definition of businesses that may apply for a licence. The council does not have any data at this time on the number of premises that may wish to take advantage of pavement licensing in 2021 and to date only one premises in the Borough has been granted a licence under the Business & Planning Act 2020. This review does not seek to change the previously agreed fees of £100 for new applications and £80 for renewals. The income budget for 2021/22 is currently set at £100 reflecting the low take-up in 2020/21.
Legal	The Government guidance indicates how Licensing Authorities are expected to operate this licensing regime, but is not legally binding. However, it could be cited should Wyre's policy be challenged by way of judicial review.

Other risks/implications: checklist

If there are significant implications arising from this report on any issues marked with a ✓ below, the report author will have consulted with the appropriate specialist officers on those implications and addressed them in the body of the report. There are no significant implications arising directly from this report, for those issues marked with an x.

risks/implications	✓ / x
community safety	✓
equality and diversity	x
sustainability	x
health and safety	x

risks/implications	✓ / x
asset management	x
climate change	x
ICT	x
data protection	x

Processing Personal Data

In addition to considering data protection along with the other risks/ implications, the report author will need to decide if a 'privacy impact assessment (PIA)' is also required. If the decision(s) recommended in this report will result in the collection and processing of personal data for the first time (i.e. purchase of a new system, a new working arrangement with a third party) a PIA will need to have been completed

and signed off by Data Protection Officer before the decision is taken in compliance with the Data Protection Act 2018.

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List of background papers:		
name of document	date	where available for inspection

List of appendices

Appendix 1 – Draft revised Wyre Council Pavement Licensing Policy