



Report of:	Meeting	Date
Neil Greenwood, Head of Environmental Health and Community Safety	Delegated to Mark Billington, Corporate Director Environment under emergency powers	29 July 2020

Business and Planning Act 2020 – Temporary Pavement Licences and Alcohol Licensing

1. Purpose of report

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

2. Outcomes

- 2.1 To agree the Policy, including the fee to be levied and the standard terms and conditions to be applied to licences.

3. Recommendations

- 3.1 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 policy be approved.
- 3.3 That the fee of £100 (all fees are exempt from VAT) for a new Wyre pavement licence and £80 for a renewal be approved.
- 3.4 To agree the standard licence duration of four months.

4. Background

- 4.1 The Business and Planning Bill was initially introduced to Parliament on 25 June 2020 as 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 legislation is not adoptive and applies automatically upon the coming into force of the Act, which received Royal Assent on 22 July 2020.

- 4.3** The Act amends the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 and so its provisions are a non-executive function.
- 4.4** The Act specifies a district council as being the appropriate local authority in England to administer temporary pavement licences.
- 4.5** Government Guidance to accompany the Act was also finalised and published on 22 July 2020.

5. Key issues and proposals

- 5.1** The Act introduces 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.

The draft policy proposes other persons in this respect to be:

- Lancashire Constabulary
- The council's Environmental Health Service
- Local Councillors

- 5.4** Tacit consent applies where a valid application for a pavement licence is submitted but not determined within the statutory timescale.
- 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 Council does not currently issue pavement café licences under part 7A of the Highways Act 1980 and so the actual cost to the Authority of having to establish and administer a novel licensing regime in such an expedited manner, are likely to be far higher than the £100 mandatory cap will realise.
- 5.9 The Act provides for a local authority to grant a pavement licence subject to such conditions as it considers reasonable.
- 5.10 Officers have been working in collaboration with other authorities through the Lancashire Licensing Officers Group and the Institute of Licensing, in order to try to establish a consistent approach to terms and conditions. This has been carried out in the absence of any standard default conditions being issued by the Government, aside from the mandatory no-obstruction and smoke-free seating conditions.
- 5.11 Where tacit consent applies, 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.
- 5.12 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 (unless this date is extended in the future by the Secretary of State).
- 5.13 The Government’s published guidance says that “the expectation is that local authorities will grant licences for twelve 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.”
- 5.14 The Local Government Association published a revised guidance note to Local Authorities on 24 July 2020 which says “Whilst councils will want to support businesses as far as possible, a one-year licence may not be appropriate everywhere for example where timed road closures have been introduced to create areas for outside seating, but only for a limited period of time.

Councils could also consider a length of licence that would enable an opportunity to review licences before summer 2021, allowing any changes to be made to local conditions for the summer of 2021.

- 5.15** It is considered that granting licences for a maximum of four months would allow flexibility to address issues that might arise during the currency of a licence, for example by amending the conditions on a renewal.
- 5.16** 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 effectively mitigated by the power to remove permission with immediate effect, where necessary.
- 5.17** It is proposed that the default position in respect of permitted hours for Wyre pavement licences should be between 09:00 hrs and 21:00 hrs, although applications outside these hours must be considered on a case by case basis, so that the authority does not fetter its discretion.
- 5.18** If the holder of a pavement licence, whether granted or deemed granted, is operating in breach of conditions attached to that licence, an authorised officer may serve a remediation notice to address the breach, if it is considered appropriate in the circumstances to do so. Alternatively the licence may be revoked with immediate effect for a breach of conditions, or a number of other specified reasons detailed in section 6 of the Act and reproduced in section 8 of the draft Policy.
- 5.19** 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.
- 5.20** The draft policy sets out factors which Wyre Council consider to be relevant when determining applications, along with an indication of the circumstances where a licence would normally be refused, to assist applicants, consultees and officers. The draft policy whilst providing guidance, is not an immutable policy and every application will be considered on its own merits.
- 5.21** Where 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.
- 5.22** The Act also temporarily amends the Licensing Act 2003 by automatically permitting premises with an existing licence to sell alcohol for consumption on the premises only, to also sell alcohol for consumption off the premises until 23:00 hours, subject to some limited exceptions where an authorisation for off sales has been refused or revoked within the last three years. These provisions also override any existing licence

conditions requiring off sales of alcohol to be made in sealed containers only, or prohibiting the sale of alcohol by delivery.

- 5.23** However the new permissions for off-sales will not apply to times when the premises licence does not already allow sales of alcohol for consumption in outdoor areas of the premises.
- 5.24** The changes to the Licensing Act 2003 have been introduced to permit licensed premises to utilise outdoor space for customers on and around their premises that is not currently included within the licensed area, such as car parks, or areas on the highway covered by a temporary pavement licence, without the need to vary their existing licence.
- 5.25** However, the authorisation is not subject to these specific restrictions or uses and so effectively allows customers to purchase alcohol at any time during the permitted hours, remove it from the licenced premises in an open container to consume elsewhere, including on the streets or on other public land.
- 5.26** To address problems that such a blanket authorisation may give rise to, the Act introduces an expedited review process whereby the automatic entitlement may be revoked or suspended within days by a Licensing Sub-Committee, should a review application be made by a Responsible Authority on the ground that the off sales are undermining one or more of the Licensing Objectives.
- 5.27** This is potentially problematic though, as the Responsible Authority must first identify the actual premises responsible, in order to submit a review. If there is only one licensed premises in the locality affected, the review process would appear to be fairly straightforward, but where there are a number of licensed premises in the affected area, it is likely to be very difficult to identify which premises is responsible for the problem.
- 5.28** Whilst these review provisions mirror the Summary Review provisions in the Licensing Act 2003, any application and decision arising from the new review procedure introduced by the Business and Planning Act 2020, has no effect on the existing licence. Only the temporary authorisation of off sales would be revoked or suspended.

Financial and legal implications	
Finance	Income from applications is difficult to predict owing to the wide definition of businesses that may apply for a licence and the council does not have any data at this time on the number of premises that would wish to take advantage of pavement licensing. The budget implications will be monitored and addressed as part of the Revised Estimates process. A notional budget of £1,000 income will be added. Provisional costings for processing and issuing a new licence indicate circa £110 per application (although the maximum charge is £100) and circa

	charge of £80 is proposed for a renewal. Where a break in licence occurs so that it is not continuously licenced, £100 will be charged. All fees are exempt from VAT. The costs of the additional training and work required to implement the new licensing process are largely staff time related and should be absorbed within existing budgets.
Legal	If the Council does not publish conditions prior to applications being made any deemed licences would only be subject to the mandatory conditions.

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
MHCLC Guidance: pavement licences (outdoor seating proposal)	22.7.20	https://www.gov.uk/government/publications/pavement-licences-draft-guidance/draft-guidance-pavement-licences-outdoor-seating-proposal

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List of appendices

Appendix 1 – Draft Wyre Council Pavement Licensing Policy