

<b>Report to:</b>	<b>LICENSING COMMITTEE</b>
<b>Relevant Officer:</b>	Tim Coglan, Head of Public Protection
<b>Date of Meeting:</b>	6 August 2020

## PAVEMENT LICENCES

### 1.0 Purpose of the report:

- 1.1 To consider a report concerning the new temporary pavement licence created by the Business and Planning Act 2020 and to approve, with or without amendments the policy and other matters outlined in this report.

### 2.0 Recommendation(s):

- 2.1 To adopt the pavement licence policy as attached at Appendix 3a.
- 2.2 To agree the standard conditions that will be attached to pavement licences, as set out in Annex 2 of Appendix 3a.
- 2.3 To set the fee for applications at £100.
- 2.4 To approve the granting of pavement licences until 30 September 2021 or such later time as appointed by regulations.
- 2.5 To delegate to the Director of Community and Environmental Services, or in his absence, the Head of Public Protection, the power to make determinations in relation to applications for pavement licences.
- 2.6 To delegate to the Director of Community and Environmental Services, or in his absence, the Head of Public Protection, the power to revoke or suspend for a fixed period pavement licences on the grounds outlined in section 4 of Appendix 3a after consultation with the Chairman and Vice-Chairman of the Licensing Committee.

### 3.0 Reasons for recommendation(s):

- 3.1 The Business and Planning Act 2020 introduces a new form of licence. These recommendations are required to enable new licences to be issued.

3.2a Is the recommendation contrary to a plan or strategy adopted or approved by the Council? No

3.2b Is the recommendation in accordance with the Council's approved budget? Yes

3.3 Other alternative options to be considered:

The Committee could amend the recommendations but if approval is not given to create a licensing scheme, applicants would be able to apply for a licence and there would be no mechanism to charge a fee or attach conditions to regulate the use of such a licence.

#### **4.0 Council Priority:**

4.1 The relevant Council priority is: "The economy – maximising growth and opportunity across Blackpool".

#### **5.0 Background Information**

5.1 The Business and Planning Act 2020 received Royal Assent on 22 July 2020. This Act contains measures to assist businesses to trade during the restrictions imposed due to Coronavirus. Pavement licences are one such measure.

5.2 A pavement licence allows a business to place removable furniture (for example, tables and chairs, heaters) on certain highways (for example, pavements) adjacent to their premises for use by the business to sell and serve food or drink, and for their customers to consume it. This is very similar to Street Café Licences under s.115E Highways Act 1980 which are already issued by the Council however its use would not be restricted to cafes and licensed premises

5.3 The issue of a pavement licence means that the holder will not commit the offence of obstructing the highway. The licence constitutes planning permission and street trading consents are not required for activities permitted by the licence.

5.4 A pavement licence only authorises the placement of furniture on the highway. It does not for example provide authorisation for the sale of alcohol under the Licensing Act 2003 where that entitlement does not already exist.

5.5 Guidance issued by the Secretary of State confirms that where there is a Public Space Protection Order (PSPO), prohibiting the consumption of alcohol, businesses wishing to provide alcohol for consumption in outside areas should obtain a Street Café Licence instead. This is because the provisions of the Business and Planning Act 2020 does not override or suspend the provisions of the Public Space Protection Order.

A proposed policy has been prepared and can be found at Appendix 3a.

- 5.6 The application process – applications are made electronically and are subject to a fee set by the Council which must not exceed £100. Due to the work involved in administering this new licence, the Committee is asked to approve a fee of £100.

Once submitted, the application must be advertised on the premises for a period of 7 days, inviting public representations. The authority must also consult the Highways department and any other persons it considers appropriate.

- 5.7 Determination of application – the Council must determine the application within 7 days of the end of the representation period. If it does not do so the application is deemed to be granted. When deciding whether to grant an application the Council must take into account any representations it has received during the consultation period. An application may only be granted if the Council considers that, taking into account any conditions that would be imposed on the licence, nothing done by the licence holder would have the effect of:

- preventing traffic, other than vehicular traffic, from—
  - a) 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),
  - b) passing along the relevant highway, or
  - c) having normal access to premises adjoining the relevant highway,
- Preventing any use of vehicles which is permitted by a pedestrian planning order or which is not prohibited by a traffic order,
- Preventing statutory undertakers having access to any apparatus of theirs under, in, on or over the highway, or
- Preventing 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.

When making decisions under the first bullet point above, the Council must have regard, in particular to the needs of disabled people and the recommended distances required for access by disabled people as set out in guidance issued by the Secretary of State.

- 5.8 Duration of licence – a licence will remain in force for such period as the Council may specify although the licence may not be for less than three months and may not extend past 30 September 2021. Where a licence is deemed granted it must be issued for 12 months. All pavement licences will expire on 30 September 2021, although there is power to extend this period by regulation. It is recommended that licences be granted until 30 September 2021.
- 5.9 Conditions – the Council may attach such conditions it considers reasonable to a licence. If the Council publishes a list of standard conditions, any licence deemed granted will be deemed to be granted subject to these published conditions. If not covered by published standard conditions, pavement licences will be subject to the following:
- A 'no obstruction condition' – that nothing done by the licence holder shall have an effect specified in the bullet points of 5.7 above;
  - A 'smoke free seating condition' – where the furniture put out on the street consists of seating for the purpose of consuming food or drink, the licence holder must make reasonable provision for seating where smoking is not permitted. In considering whether reasonable provision has been made, the Council must have regard to guidance issued by the Secretary of State.

A list of proposed standard conditions can be found in the draft policy at Appendix 3a.

- 5.10 Appeal - there is no right of appeal against the refusal of a pavement licence.
- 5.11 Delegations -The timescales prescribed under the act for applications to be processed make it impossible for them to be placed before a committee meeting. Members are therefore asked to delegate the determination of applications under the Business and Planning Act 2020 to the Director of Community and Environmental Services or in his absence, the Head of Public Protection. To promote transparency, a list of decisions made will be published on a weekly basis.
- 5.12 Revocation and Suspensions- Where there are issues regarding failure to comply with conditions, issues of nuisance, crime or anti-social behaviour related to the pavement licence or where the highway is no longer suitable for a pavement licence, the licence can be revoked or suspended for a fixed period. The potential reasons for suspension or revocation are outlined fully in section 4 of Appendix 3a. Again it may be necessary to move quickly to protect public safety particularly if changes to Coronavirus regulation occur so again it is proposed that such powers are delegated Director of Community and Environmental Services or in his absence, the Head of Public Protection. It is not proposed that there will be many of these revocations and suspensions and to ensure the power is used in a proportionate manner, the Chairman and Vice-Chairman of the Licensing Committee will be consulted before such decisions are made.

5.13 Does the information submitted include any exempt information? No

5.14 **List of Appendices:**

Appendix 3a: Draft Pavement Licence Policy.

**6.0 Legal considerations:**

6.1 The Business and Planning Act creates a new pavement licence. Decisions need to be made by the Licensing Committee to determine how this new licence is administered

**7.0 Human Resources considerations:**

7.1 None.

**8.0 Equalities considerations:**

8.1 None.

**9.0 Financial considerations:**

9.1 There is a potential loss of income to the Council if businesses who previously held a Street Café Licence applied for a pavement licence instead. The Licensing Committee has been asked to approve charging the maximum fee possible so as to minimise any short-fall however businesses have the legal right to apply for such a licence.

**10.0 Risk management considerations:**

10.1 None.

**11.0 Ethical considerations:**

11.1 None.

**12.0 Internal/ External Consultation undertaken:**

12.1 Internal consultation has taken place with Highways, Street Scene and other Council departments.

**13.0 Background papers:**

13.1 None.