

BUSINESS AND PLANNING ACT 2020

CONSULTATION ON DRAFT POLICY ON PAVEMENT LICENSING

Relevant Portfolio Holder	Councillor M Stringfellow
Portfolio Holder Consulted	No
Relevant Head of Service	Simon Wilkes – Head of Worcestershire Regulatory Services
Wards Affected	All Wards
Ward Councillor Consulted	N/A
Non-Key Decision	

1. SUMMARY OF PROPOSALS

- 1.1 The Council has been given responsibility for the issuing of pavement licences under the Business and Planning Act 2020. The licensing regime, which was implemented during the Covid-19 pandemic and was intended to be temporary, has now been made permanent.
- 1.2 Members have previously approved a draft Policy on Pavement Licensing for the purpose of consultation with relevant stakeholders and are now asked to consider the responses received during the consultation exercise and then to approve and adopt a finalised Policy on Pavement Licensing.

2. RECOMMENDATIONS

2.1 Members are asked to RESOLVE;

To approve and adopt the draft Policy on Pavement Licensing shown at Appendix 2 to take immediate effect.

3. KEY ISSUES

Financial Implications

- 3.1 The costs involved in carrying out the consultation were met from existing budgets held by Worcestershire Regulatory Services.
- 3.2 The resource implications for Worcestershire Regulatory Services arising from the implementation and ongoing administration of the permanent regime, may need to be reflected in the Council's future contributions to the Worcestershire Regulatory Services budget.

- 3.3 The Business and Planning Act 2020 contains provisions allowing Councils to charge fees for the grant and renewal of licences to recover the costs of administering the licensing regime. Certain costs associated with removing and storing furniture placed on the highway without authorisation, can also be recovered by the charging of fees.

Legal Implications

- 3.4 It is considered best practice to have in place a clear and transparent policy that sets out the approach the Council takes in respect of its pavement licensing functions.
- 3.5 It is also considered best practice to carry out consultation on any such policy before it is implemented, in order to minimise the risks of any legal challenge to any aspects of that policy.

Service / Operational Implications

- 3.6 In July 2020 the Business and Planning Act 2020 was enacted. The legislation was expedited through Parliament to make provisions relating to the promotion of economic recovery and growth as the country emerged from various restrictions that had been put in place in response to the global Covid-19 pandemic.
- 3.7 Part 1 of the Act introduced provisions in England and Wales that put in place a streamlined process to enable businesses to obtain permission to place removeable furniture on the highway for use in connection with the sale and consumption of food and drink. The need for a streamlined process was to ensure that hospitality businesses could maximise their opportunities to trade profitably at a time when social distancing requirements guidance remained in place which impacted the number of customers that they could accommodate inside their premises.
- 3.8 Responsibility for issuing the new “pavement licences” was given to district councils in England, including Redditch Borough Council.
- 3.9 As previously mentioned, the legislation was put in place very quickly and was commenced as soon as it was enacted. That meant that there was very little time available to put in place policies and procedures for dealing with applications.
- 3.10 Worcestershire Regulatory Services agreed to take on the temporary pavement licensing functions on behalf of the Council as they were best placed to do so given that they were already carrying out functions on the Council’s behalf under the Licensing Act 2003.

- 3.11 Officers worked at pace to draft policies, application forms, licence templates and website content to enable businesses to be able to apply for pavement licences as soon as possible after the legislation came into force. The policies were approved under emergency delegations in place at the time to allow them to come into effect as quickly as possible.
- 3.12 The provisions in part 1 of the Business and Planning Act 2020 were only originally intended to remain in place for a temporary period, and section 10 of the Act originally stated that the provisions would expire at the end of 30 September 2021.
- 3.13 However, the temporary regime was subsequently extended on three separate occasions before a decision was taken to make it a permanent licensing regime. The regime was made permanent on 31 March 2024 by virtue of the commencement of provisions made in the Levelling Up and Regeneration Act 2023.
- 3.14 At the same time as making the regime permanent, some important amendments were made to the pavement licensing regime including extending the consultation and determination periods in respect of applications from 7 to 14 days each. The permanent regime also contains new powers to serve notices and remove furniture when it has been placed on the highway without permission.
- 3.15 Once the pavement licensing regime had been made permanent, it was necessary to review and revise the Council's Policy on Pavement Licensing to ensure that it is fit for purpose and reflects the amendments that have been made to the regime since it was first introduced.
- 3.16 A draft Policy on Pavement Licensing was prepared by officers and presented to the Licensing Committee on 15th July 2024. The draft policy is based on a template that has been created to form the basis for similar policies across all six district Councils in Worcestershire.
- 3.17 The draft policy has been drafted with reference to the guidance on pavement licences published by the Department for Levelling Up, Housing and Communities (DLUHC) on 2nd April 2024 under section 8 of the Business and Planning Act 2020. This guidance can be seen at: www.gov.uk/government/publications/pavement-licences-guidance/pavement-licences-guidance.
- 3.18 The first two sections of the draft policy set out the background to the licensing regime, explains the scope and provides assistance in understanding key terms from the legislation that are used throughout the document.

- 3.19 The draft policy goes on to set out how people apply for a licence, how those applications will be advertised and consulted upon and how they will be determined. The draft policy also sets out the standard duration of licences and the conditions that licences that are granted or deemed to have been granted, will be subject to.
- 3.20 The draft policy also sets out the approach that will be taken in respect of compliance and enforcement activities in respect of the pavement licensing regime.
- 3.21 Members of the Licensing Committee resolved to approve the draft Policy on Pavement Licensing for the purpose of consultation with relevant stakeholders.
- 3.22 The consultation exercise was undertaken between 19th August 2024 and 30th October 2024. The consultation exercise was facilitated using an online survey tool that asked respondents whether they agreed with the content of the draft policy in respect of:
- The requirements when making applications (new and renewal)
 - Those who would be consulted on applications
 - The approach to determining applications
 - The standard licence duration
 - The standard conditions that will apply to licences granted or deemed to be granted
 - The approach that will be taken to compliance and enforcement activities
- 3.23 Where respondents did not agree with any part of the draft policy, they were asked to provide further explanation. An opportunity was also provided for respondents to make any other comments or observations that they had on the draft policy.
- 3.24 The consultation survey was sent to the following:
- Highway Authority – Worcestershire County Council
 - West Mercia Police Licensing Team
 - Hereford and Worcester Fire & Rescue Service
 - Environmental Health (WRS)
 - Centres Manager for Redditch Borough Council
 - Planning Department at Redditch Borough Council
 - Worcestershire Safeguarding Children Partnership
 - Director of Public Health (Worcestershire County Council)
 - Trading Standards (Worcestershire County Council)
 - Engagement, Equalities and Policy Team at Redditch Borough Council
 - Sensory Impairment Team at Worcestershire County Council

- District Councillors
 - Feckenham Parish Council
 - Representative bodies of local businesses
 - National trade bodies for hospitality businesses
 - Local and national representative bodies for those with disabilities
 - Those who hold or have applied for pavement licences from the Council previously
- 3.25 A link to the consultation survey was hosted on the consultations page of the Council's website and publicised via social media channels.
- 3.26 Only three people responded to the consultation survey. A summary of the responses received to the questions asked as part of the consultation exercise, can be seen at **Appendix 1**.
- 3.27 In respect of application requirements, one respondent has suggested that photos of furniture and the existing layout should be provided when applying for renewal of a licence.
- 3.28 The policy has been deliberately designed to ensure that administrative burdens on those renewing an existing licence are minimised by only requiring such items to be provided if the nature of the furniture or the area of the highway authorised to be used has changed. The policy states at paragraph 3.4:
- "... if the licence holder wishes to change any of the terms of their licence, including amending the part of the relevant highway that the licence permits the furniture to be placed, then the application will not be treated as a renewal application and will instead be treated as an application for the grant of a licence."*
- 3.29 In respect of consultation on applications, one respondent suggested that residents should be consulted. Members are reminded that the applicant for a pavement licence has to display a public notice at the premises and that all applications will be advertised online. Officers consider that this provides adequate opportunity for local residents to become aware of applications and to respond to them if they wish to.
- 3.30 Another respondent suggested that certain areas should be "pre-approved" to speed up decision making. Officers would remind Members that the timescales for considering and determining applications are set out in the Business and Planning Act 2020 and would need to be followed when dealing with each individual application. Each application will also need to be considered on its own merits.

- 3.31 In respect of the standard conditions to be attached to licences, one respondent has suggested that there should be some allowance for storage of certain items next to a property outside overnight.
- 3.32 Members are reminded that pavement licences are issued in respect of removeable furniture only. Officers believe that all furniture authorised by a pavement licence needs to be stored securely away from the highway between the hours of 23:00hrs and 07:00hrs and at all other times when the premises is closed. This is to ensure that furniture does not get used in connection with crime or anti-social behaviour late at night or after the relevant business has closed for the evening.
- 3.33 Having considered the consultation responses, officers do not believe that any changes need to be made to the draft Policy on Pavement Licensing which was consulted upon. The only small change required is the inclusion of the Council's new logo.
- 3.34 Having made that change, officers now recommend that Members approve and adopt the draft Policy on Pavement Licensing shown at **Appendix 2**.

4. RISK MANAGEMENT

- 4.1 Failing to carry out proper consultation on a policy of this nature before it is implemented, would increase the risk of the policy being subject to a successful legal challenge.

5. APPENDICES

Appendix 1 - Summary of Consultation Responses

Appendix 2 - Draft Policy on Pavement Licensing

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