

Temporary Pavement Licensing

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Portfolio: Clean and Safe Environment

Ward(s) Affected: All

Purpose of the Report:

To enable temporary pavement licences to be administered in support of local businesses.

On 21 July 2020, Cabinet considered a report and resolved to the recommendations it contained to enable temporary pavement licensing to be administered. The Business and Planning Act 2020 has since been finalised and received royal assent, and Part 1 contains the legal provisions on temporary pavement licensing.

A late amendment during the passage of the legislation through Parliament saw the insertion at Section 8(2) of a requirement that Sections 1 to 7 of the Business and Planning Act 2020 are not to be the responsibility of a local authority's executive. For this reason and under updated legal advice the decisions sought from Cabinet, (see report at Appendix 1), must be made by full Council.

Recommendations:

- (1) To set the temporary pavement licensing application fee at £75.
- (2) To delegate authority to the following officers for the purposes provided at subparagraphs (a) and (b) below:
 - Licensing & Enforcement Officers
 - Senior Environmental Health Officer (Licensing)

- Food, Safety and Licensing Team Manager
 - Assistant Director Regulatory
 - Director for Place
- (a) To decide whether to approve, refuse, or revoke pavement licences, also to set their durations.
- (b) To decide which licence conditions are attached to each licence (selecting from local standard conditions as established, and nonstandard conditions as appropriate to individual circumstances).
- (3) To delegate authority to the following officers the power to enforce licence conditions and to vary or revoke individual licences:
- Senior Environmental Health Officer (Licensing)
 - Food, Safety and Licensing Team Manager
 - Assistant Director Regulatory
 - Director for Place



Agenda Item: 9

Cabinet

21 July 2020

TEMPORARY PAVEMENT LICENSING

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Portfolio Holder: Clean and Safe Environment

Wards Affected: All

Purpose of the Report:

To seek Cabinet decisions on the delegation of authority to officers, and the setting of fees and licence conditions, for new temporary Pavement Licences to local business premises.

Recommendations:

That Cabinet agrees to:

- (1) Set the temporary pavement licensing application fee at £75.
- (2) Delegate authority to the following officers for the purposes provided at sub-paragraphs (a) and (b) below:
 - Licensing & Enforcement Officers
 - Senior Environmental Health Officer (Licensing)
 - Food, Safety and Licensing Team Manager
 - Assistant Director Regulatory
 - Director for Place
- (a) To decide whether to approve, refuse, or revoke pavement licences, also to set their durations.
- (b) To decide which licence conditions are attached to each licence (selecting from local standard conditions as established, and non-standard conditions as appropriate to individual circumstances).

- (3) Delegate authority to the following officers the power to enforce licence conditions and to vary or revoke individual licences:

- Senior Environmental Health Officer (Licensing)
- Food, Safety and Licensing Team Manager
- Assistant Director Regulatory
- Director for Place

1 SUMMARY

- 1.1 Local businesses are struggling for financial viability following the Covid-19 emergency restrictions. Temporary pavement licensing by district councils is proposed nationally to help maximise businesses' customer capacity. The final form of legislation providing for this temporary pavement licensing is awaited imminently, however decisions by Cabinet as proposed in this report are required now to enable the necessary licensing administration process and acceptance of applications from local businesses.

2 BACKGROUND

- 2.1 There is a discretionary power for local authorities to grant pavement licenses under the Highways Act 1980. The consultation period is 28 days and the fee which can be in the order of £300-400 varies considerably between local authorities. This Council does not presently offer pavement licences.
- 2.2 The Business and Planning Bill was debated by Members of the House of Lords during its second reading on 6 July 2020 and is likely to become enacted in late July. It introduces a temporary streamlined and inexpensive route for businesses such as cafes, restaurants and licensed premises to place removable furniture on certain highways adjacent to their premises. This will support businesses to operate safely and offer the financial benefit of additional customer seating capacity while social distancing measures remain in place. Application fees to be decided by councils individually are capped at £100.
- 2.3 The introduction in the Business and Planning Bill of the new temporary approach to pavement licenses is an important part of enabling businesses to achieve economic recovery, by safely increasing their trading space, while mitigating any potential negative impacts via a licensing process. It is important to note that the draft Bill mandates the introduction of the proposed temporary pavement licensing in our District.
- 2.4 The proposed process will allow for a five working day consultation period involving liaison with the Highways Authority and other agencies, followed by a determination period of a further five working days.
- 2.5 If the Council has not determined the application by the expiration of the determination period, the application is deemed approved. It is imperative that

the council expedites a licensing process that suitably governs decision-making and the conditions under which licence holders operate outdoor seating etc.

- 2.6 Approved pavement licences will be subject to national standard conditions published by the Secretary of State. They may also be subject to local standard conditions when imposed (a draft of these is provided at Appendix 1), and specific conditions attached to licences granted in respect of individual premises.

3 CURRENT POSITION

- 3.1 Currently this Council does not issue any permissions for furniture to be placed on the public highway adjacent to businesses. Meanwhile, as we emerge from emergency Covid-19 restrictions, many businesses face immediate and urgent needs to secure financial and this applies not least to our local catering and hospitality businesses. There is a general desire to see a positive and progressive approach in offering support for local business financial recovery and it would suitably reflect this approach to expedite the implementation of temporary pavement licensing. Inevitably this new licensing will raise concerns in localities and individual cases, where noise or other concerns arise, however the Council's powers will rely on rapid licensing decisions and effective licensing conditions and enforcement as appropriate.
- 3.2 Officers have made preparations for administering temporary pavement licensing and preparatory discussions have been held with the regulatory partner agencies concerned.

4 PROPOSED ACTION

- 4.1 In order that business viability can be supported at the earliest opportunity, by granting pavement licences where appropriate, it is necessary to seek approval ahead of the legislation being enacted. The implementation of a simplified process and revised scheme of delegation to officers that will enable the timely determination of pavement licence applications and any subsequent enforcement action. This requires decisions on the points noted at 4.2 to 4.5 below, which are reflected in the recommendations contained in this report.

Application fee

- 4.2 This Council may choose to set an application fee of no more than £100. Officers have calculated that an application fee of £75 would provide cost recovery for this council, just as it would also for South Norfolk and for Breckland District Council thereby offering a degree of local consistency.

Decision-making, local standard conditions, and enforcement

- 4.3 It will be safe and appropriate to grant pavement licences to some businesses and not to others. This will depend primarily on local circumstances (eg there being sufficient safe outdoor space on the highway or pavement) and risks of causing anti-social behaviour, neighbour noise problems, crime and disorder. The draft legislation provides for formal consultation only with the Highways Authority, however officers propose that five working days' informal consultation would also take place with Norfolk Constabulary, with the Council's environmental health service, and with the relevant town or parish council. Given the very tight timescale for deciding applications, there will need to be delegated authority to decide whether to grant or refuse applications, also to decide which local standard (and any non-standard) conditions are attached to each pavement licence.
- 4.4 The delegation to officers proposed at 8(2) deliberately includes a wide range of officer posts. The intention is that the vast majority of the decision making process will be carried out by Licensing Officers. However, the wider delegation allows for greater resilience to respond to the short timescale and acknowledges that this is new legislation which is still in draft form. The level of delegation could be subject to review by the relevant Portfolio Holder and Chairman of Licensing.
- 4.5 The Bill includes the power to vary, modify or revoke a pavement licence. This may become necessary where a licence holder exceeds what is permitted or fails to manage compliance with licence conditions.
- 4.6 It is proposed that the Senior Environmental Health Officer (Licensing), the Food Safety and Licensing Team Manager, the Assistant Director (Regulatory) and the Director for Place are delegated the power to enforce licence conditions and to vary or revoke individual licences.

5 OTHER OPTIONS

- 5.1 The determination of applications by a Licensing Sub-Committee, whether or not representations have been received, is not consistent with the spirit or timescale specified in the legislation and this would introduce unnecessary delay and increase the cost of administration. Instead, it is proposed that progress implementing will be reported to members to enable the achievement of satisfactory licensing outcomes to be monitored whilst enabling businesses to provide sufficient seating numbers to maintain business viability.

6 ISSUES AND RISKS

- 6.1 If there is no licensing process put in place by this Council to urgently consider applications or they are not processed and decided in the required timescale then legally they will be deemed granted. In such a scenario, licences deemed granted will not benefit from consideration of individual and local circumstances and relevant decisions and controls being applied.

- 6.2 **Resource implications** – The administration and enforcement of temporary pavement licensing through to September 2021 will require officer administration and the proposed application fee of £75 is expected to recover these costs.
- 6.3 **Legal implications** – Legal advice has been taken and the Monitoring Officer has been consulted. The legal implications of this regulatory activity are addressed in this report.
- 6.4 **Equality implications** – An equalities assessment has been completed. There is a potential impact on individuals who are visually impaired or have mobility issues, however, these considerations will be factored into the consideration of each local setting, individual circumstances and the detail of each pavement licence application and any conditions attached if it is granted.
- 6.5 **Environmental impact** – There is a risk of windblown litter arising from outdoor pavement licensed areas. This would be addressed in licence conditions, as a responsibility of the licence holder subject to licence review or enforcement if necessary, and it is expected that businesses will manage pavement licensed areas responsibly. The decisions sought in this report will not in themselves impact on the environment.
- 6.6 **Crime and disorder** – There is a potential for the use of street furniture sited outside premises to contribute to noise or antisocial behaviour issues. The police and Community Protection Team will be consulted regarding each application and their representations taken into consideration. The legislation will allow for enforcement action including the revocation of a licence where a license condition is breached, including risks to public safety or anti-social behaviour or a public nuisance.
- 6.7 **Risks** – The draft legislation proposes that should a local authority not determine an application before the end of the determination period, then it is deemed granted subject to local conditions. The decisions sought in this report are designed to ensure that risks arising from pavement licensed premises are well managed.

7 CONCLUSION

- 7.1 The decisions sought in this report will enable implementation and administration of temporary pavement licensing by delegated officers to be completed without delay, enabling businesses to safely expand their customer capacity and assist economic recovery.
- 7.2 The proposed application fee will recover the Council's operating costs

8 RECOMMENDATIONS

8.1 That Cabinet agrees to:

- (1) Set the temporary pavement licensing application fee at £75.
- (2) Delegate authority to the following officers for the purposes provided at sub-paragraphs (a) and (b) below:
 - Licensing & Enforcement Officers
 - Senior Environmental Health Officer (Licensing)
 - Food, Safety and Licensing Team Manager
 - Assistant Director Regulatory
 - Director for Place
- (a) To decide whether to approve, refuse, or revoke pavement licences, also to set their durations.
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 - Director for Place

Background Papers

1. Business and Planning Bill 2020 (part 1)
https://publications.parliament.uk/pa/bills/lbill/58-01/119/5801119_en_1.html
2. Draft UK Government guidance: Pavement Licences (outdoor seating proposal) <https://www.gov.uk/government/publications/pavement-licences-draft-guidance/draft-guidance-pavement-licences-outdoor-seating-proposal>

Business and Planning Act 2020

I/We wish to apply for a pavement licence on the highway (section 115A (1) Highways Act 1980) in the Broadland or South Norfolk district.

1. Your name:	
2. Telephone no:	Mobile no:
3. E-mail address:	
4. Name of licence holder: (if different from above)	

5. Business name and address of premises to be licensed:

a. Telephone no. (if different to above)

6. Address for correspondence (if different to above)

SECTION B – Licence Details**Purpose of Application**

7. Please specify the purpose (or purposes) for which the furniture will be used (tick all that apply)

- ☐ To sell/serve food
- ☐ To sell/serve drink
- ☐ For customers to consume food bought from the premises
- ☐ For customers to consume drink bought from the premises

Dimensions – Size and Layout

8. What is the size of the proposed licensed area?

Width (m)

Depth (m)

9. Proposed number of tables?

Proposed number of chairs?

10. Do you propose to use parasols?

YES/NO

If YES, how many?

11. Do you propose to use space heaters?

YES/NO

If YES, how many?

If you intend to use space heaters you will need to submit a risk assessment with your application.

12. Do you propose to use barriers around the edge of the licensed area?

If YES, please describe the type of barriers

13. Do you propose to use any other furniture/equipment not already listed?

If YES, please give details

Details of furniture and means of enclosure

Applicants are requested to supply as much detail as possible for all items proposed. Photographs, scale drawings, clear photocopies and technical details (dimensions/colours/materials etc.) are preferred. All items need to be specified/detailed on the main site plan.

<p>14. Please give brief description, suppliers and technical details, where appropriate, of proposed furniture.</p>
<p>15. Please give brief description, suppliers and technical details, where appropriate, of proposed enclosure/barriers.</p>

Hours of Operation

On what days do you propose to open?		Please tick	Hours of operation
	Monday		
	Tuesday		
	Wednesday		
	Thursday		
	Friday		
	Saturday		
	Sunday		

NB: Pavement licences will not be granted beyond 23:00 (11pm)

<p>16. Will alcoholic drinks be served and consumed within the licensed area?</p> <p>YES NO (If answering NO go straight to Q.19)</p>
<p>a. If YES, please state:</p> <p>Premises licence number:</p>

SECTION C – Compulsory Requirements

19. Any Pavement Licences will be issued subject to the following conditions:	
<input type="checkbox"/>	The licence holder shall ensure that use of the area authorised under the Pavement Licence does not cause a noise nuisance to nearby properties.
<input type="checkbox"/>	The licence holder shall ensure that empty glasses and crockery are removed from the licensed area on a regular basis.
<input type="checkbox"/>	The licence holder shall ensure that any litter is cleared from the licensed area on a regular basis and that the area is kept in a clean, orderly and tidy manner.
<input type="checkbox"/>	A-boards, advertising signs, beer kegs, bottle crates or any other unsightly or unapproved items must not be placed on or adjacent to the licensed area.
<input type="checkbox"/>	Tables, chairs and other associated structures must be removed from the public highway after the close of trading hours. The furniture must not be stored on the
<input type="checkbox"/>	The tables, chairs and any other furniture provided, must conform to the details of the Pavement Licence application, unless the licensing authority gives written approval of any change.
<input type="checkbox"/>	The licence holder shall be responsible for making good any damage caused to the site in the exercise of this licence.
<input type="checkbox"/>	The licence holder must remove the tables, chairs and parasols from the licensed area if: <ul style="list-style-type: none"> a) works to the area are to be undertaken by the Council, the highway authority or a utility provider b) so requested by a Police Officer to ensure public safety
<input type="checkbox"/>	The licence holder must keep a copy of this licence on the premises and it must be available for inspection at reasonable times. The licence must be prominently displayed so as to be visible from the highway.
<input type="checkbox"/>	When drinks are served on the licensed area in glasses, they must be made of toughened or tempered safety glass.
<input type="checkbox"/>	The licence holder shall ensure that social distancing guidelines are complied with, in line with the Coronavirus Regulations 2020 and associated guidance.
<input type="checkbox"/>	The holder(s) shall not cause any obstruction of the highways (other than the permitted use) or danger to persons using it and shall not permit persons to gather so as to cause a nuisance or annoyance or danger to any persons lawfully using the highway.
<input type="checkbox"/>	All Pavement Licences will be issued with an earliest start time of 8am and a maximum finish time of 23:00 (11pm) each day.

NB. If your application is successful, the operation of your Pavement Licence may be subject to periodic inspections to ensure that all the terms and conditions of the licence are adhered to. Failure to do so may result in the suspension or termination of your licence.

SECTION D – Documentation Required

Please tick the checklist boxes below to ensure that with this application form you provide the supporting sites plans and any other required documents. These must be up-to-date and accurate and show fully and clearly what you are applying for.

ENCLOSED

<input type="checkbox"/>	A plan on which your premises and the proposed Pavement Licence area are clearly outlined – suggested scale 1:100 or 1:150.
<input type="checkbox"/>	A 1:100 or 1:150 scale site plan (where possible) showing the building line of the application premises and adjacent buildings, the location of the kerb line, the distance between the building line and the kerb line, the precise boundary of the proposed licensed area giving measurements of the width and depth of the area, the location of all accesses on your frontage including fire exits, the location of existing obstructions within or near to the street café area, e.g. lamp posts, bollards, trees etc, the size and location of the proposed tables, chairs and other furniture and the size and location of enclosure barriers.
<input type="checkbox"/>	Photographs, brochures or scaled drawings showing design, dimensions, colour and materials of the tables and chairs you propose to use.
<input type="checkbox"/>	Photographs, brochures or scaled drawings showing design, dimensions, colour and materials of proposed means of enclosure.
<input type="checkbox"/>	Design and access statement showing the provision made for people with sensory and physical disabilities.
<input type="checkbox"/>	Third party public liability insurance certification up to the value of £5 million.
<input type="checkbox"/>	Payment of the appropriate application fee (if applicable).
<input type="checkbox"/>	If you propose to use space heaters you must also provide a risk assessment.
<input type="checkbox"/>	Photos of the site notice to demonstrate it has been properly displayed.

SECTION E – Declaration

I declare that I am over 18 years of age and I certify that, to the best of my knowledge and belief, the information I have provided in this application form and on the submitted plans is both accurate and correct.

Signed

Name of Company (if applicable)

Position in Company (if applicable)

Dated

Broadland District Council and South Norfolk Council takes your privacy very seriously and provides the following information in compliance with *Data Protection Legislation*. Under data protection legislation we lawfully process your personal information as a public authority which may involve sharing your information with other regulatory authorities.

Data received as a result of any Licensing application will be retained for the period of your licence and for a period of 7 years once the licence has lapsed. We may need to share your information with other regulatory authorities, any relevant Council Committees and other departments within Broadland District Council and South Norfolk Council to ensure the best possible service.

Under data protection law you have the right to request access to, rectification, restriction or objection to the processing of your personal data, as detailed in our Privacy Policy (on our website). You can contact our Data Protection Officer at dpo@broadland.gov.uk or 01603 430615. You also have the right to lodge a complaint with the regulator, the Information Commissioner's Office.

Please send your completed application to:

licensing@broadland.gov.uk (Broadland applications) or
licensingteam@s-norfolk.gov.uk (South Norfolk applications)