

DECISION ITEM

REPORT OF	MEETING	DATE	ITEM NO
RESOURCES DIRECTORATE	COUNCIL	20 JULY 2020	12

PAVEMENT LICENCES

PUBLIC ITEM

This item is for consideration in the public part of the meeting.

SUMMARY

The Business and Planning Act 2020 has introduced a temporary fast-track process to allow pubs, cafes and other food businesses to obtain permission to place furniture such as tables and chairs on the pavement outside their premises. Businesses will need to apply to the council for a licence. The council needs to make decisions on a number of matters to allow applications to be made and determined.

RECOMMENDATIONS

1. Adopt the draft Pavement Café Licensing policy appended to this report;
2. Set a fee of £100 to be charged for applications for pavement licences under the Planning and Business Act 2020;
3. Require applicants for pavement licences to include the information set out in section 3.1 of the draft policy as part of, or accompanying, their application;
4. Publish the conditions set out in appendix 2 of the draft policy as the conditions subject to which the council proposes to grant pavement licences;
5. Direct that licenses be granted to for a duration of six months unless specific considerations related to the site or application indicate a different duration to be appropriate;
6. Add "*all matters in relation to pavement licences under the Planning and Business Act 2020*" as item 39 in the functions of the Public Protection Committee in part 2 of the council's constitution;
7. Delegate to the Director of Resources the power to make determinations in relation to applications for pavement licences under the Business and Planning Act 2020; and
8. Allow disappointed applicants to make representations to the Public Protection Committee as set out in paragraph 16.

SUMMARY OF PREVIOUS DECISIONS

None

CORPORATE PRIORITIES	
Spending your money in the most efficient way to achieve excellent services (Value for Money)	
Delivering the services that customers expect of an excellent council (Clean and Green)	
Working with all partners (Vibrant Economy)	√
To make sure Fylde continues to be one of the most desirable places to live (A Great Place to Live)	√
Promoting Fylde as a great destination to visit (A Great Place to Visit)	√

REPORT

PAVEMENT LICENCES

1. The Business and Planning Act was introduced to parliament on 29 June this year and is expected to come into force on 20 July. It contains measures intended by the Government to assist businesses and communities to recover from economic dislocations caused by the coronavirus pandemic. Among these is a fast track procedure for pavement licences.
2. A pavement licence is a licence which 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.
3. A draft policy for pavement licences under the 2020 act is attached as appendix 1. Members are asked to consider adopting the policy, and to make specific decisions on certain matters needed to allow applications to be made and determined.

APPLICATION PROCESS

4. An application for a licence must be made electronically and include a fee set by the council, to a maximum of £100.
5. The streamlined process provides for a seven-day consultation period after an application has been made. During the consultation period, the business must display a notice outside the premises, and the council must publish the application and invite representations on it.
6. The council must make a decision on the application within seven days after the end of the consultation period. If it fails to do so, the application is deemed to be granted as made.

DETERMINATION CRITERIA FOR APPLICATIONS

7. Before deciding whether to grant an application, the council must take into account any representations which it has received during the consultation period. It must also consult the highway authority and such other persons as it considers appropriate. The council must refuse the application if granting it would prevent access to the highway for highway users, as described in the act.
8. An application which is granted or deemed to have been granted will be potentially subject to four kinds of condition. These are:
 - A mandatory condition, whose wording is set out in the act, designed to preserve access for highway users;
 - Bespoke conditions, tailored by the council to the particular application (not applicable if the licence is deemed to have been granted);
 - Standard conditions published by the council, unless inconsistent with any bespoke condition;
 - National conditions published by the Secretary of State, unless inconsistent with a bespoke condition or standard condition.
9. There is no statutory right of appeal against decisions to refuse a licence or place conditions on one. The council could, if it wished, introduce an internal review procedure.

DECISIONS NEEDED BY THE COUNCIL

10. **Fees for applications:** The council can charge a fee for applications subject to a maximum of £100. Members are asked to decide what fee to charge. Applications under the existing, less streamlined, procedure are charged on a cost recovery basis of £312 for a new application, and £230 for a renewal. Officers' recommendation is to charge the maximum permissible fee of £100 for new applications. Members may want to consider charging a lower fee for renewals.
11. **Information to be included in applications:** Applications must include certain information required by the legislation. Councils can also ask for other information. Officers' recommendation is to require applications to include the information set out in section 3.1 of the draft policy.
12. **Standard conditions:** These are the conditions that will be applied to every licence granted or deemed to be granted. The draft Government guidance says that, in setting standard conditions, councils should consider:
 - public health and safety – for example, ensuring that uses conform with latest guidance on social distancing and any reasonable crowd management measures needed as a result of a licence being granted and businesses reopening;
 - public amenity – will the proposed use create nuisance to neighbouring occupiers by generating anti-social behaviour and litter; and
 - accessibility – taking a proportionate approach to considering the nature of the site in relation to which the application for a licence is made, its surroundings and its users, taking account of:
 - any other temporary measures in place that may be relevant to the proposal, for example, the reallocation of road space. This could include pedestrianised streets and any subsequent reallocation of this space to vehicles;
 - whether there are other permanent street furniture or structures in place on the footway that already reduce access;
 - the recommended minimum footway widths and distances required for access by mobility impaired and visually impaired people as set out in Section 3.1 of Inclusive Mobility, and
 - other users of the space, for example if there are high levels of pedestrian or cycle movements.

Taking this guidance into account, officers recommend that members adopt the conditions set out in appendix 2 of the draft policy (itself attached as appendix 1 to this report) as its standard conditions.
13. **Duration of licence:** Licences last until 30 September 2021, unless granted for a shorter period. The draft Government guidance says: *"The expectation is that local authorities will grant licences for 12 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"*. Notwithstanding that guidance, it is considered that granting licences for a maximum of six 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.
14. **Delegation:** Licensing matters other than those covered by the Licensing Act 2003 and the Gambling Act 2005 normally fall within the remit of the Public Protection Committee, with powers to decide on individual applications being delegated to officers where appropriate. As the Business and Planning Act is entirely new legislation, it is not covered by any existing delegation. Accordingly, members are asked to add all matters relating to the act to the terms of reference of the Public Protection Committee.
15. 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 Resources. Members will note that the draft policy, which members are invited to adopt, includes ward members as consultees for any application made for a site within their ward.
16. **Appeals:** Members are asked if they wish to put in place a procedure for an internal review of determinations made under the act. It is recommended that any applicant whose licence application is refused, or is granted

subject to conditions with which they disagree, be given the chance to make written and /or oral representations (limited to ten minutes) to the next scheduled meeting of the Public Protection Committee.

IMPLICATIONS	
Finance	Insofar as the legislation results in applicants applying for licences under the new provisions, rather than the existing ones, there will be a loss of revenue to the council. This will depend on the fee charged for the new licences, but if the maximum fee of £100 is charged, will be up to £212 per licence.
Legal	The legislation containing the new provisions was put in place with extreme speed.
Community Safety	The new arrangements are part of the Governments commitment to assist businesses and communities recover from the dislocations caused by coronavirus.
Human Rights and Equalities	No implications
Sustainability and Environmental Impact	The new provisions are designed to encourage use of more pavement areas for eating and drinking. This will inevitably have an environmental impact, but the suggested conditions are intend to manage and mitigate such impacts.
Health & Safety and Risk Management	The suggested conditions are intended to minimise health and safety risks to pedestrians and other highway users.

LEAD AUTHOR	CONTACT DETAILS	DATE
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BACKGROUND PAPERS		
Name of document	Date	Where available for inspection
Business and Planning Bill: Explanatory notes	25 June 2020	https://publications.parliament.uk/pa/bills/cbill/58-01/0148/en/200148en.pdf
House of Commons Library briefing paper: Business and Planning Bill 2019-21	26 June 2020	https://commonslibrary.parliament.uk/research-briefings/cbp-8947/
Draft Pavement Café Licensing Policy	30 June 2020	Town Hall, Lytham St Annes

Attached documents
Draft Pavement Café Licensing Policy

