



**OPEN
LICENSING AND APPEALS COMMITTEE**

Licensing and Appeals Committee – 27 June 2023

TEMPORARY PAVEMENT LICENSING REGIME – UPDATE

Report of Director of Regulatory Services

Report Author and Contact Details

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Wards Affected

District Wide

Report Summary

To provide an update regarding the temporary pavement licensing regime introduced in 2020. The report takes account of proposals contained in the Levelling Up and Regeneration Bill 2022, to provide an extension of the current licensing provisions beyond 30 September 2024.

Recommendations

1. That the report be noted
2. That the extension to the temporary pavement licence regime be implemented, with applications for pavement licences to expire on or before 30 September 2024 being invited from food and drink businesses, (subject to enabling legislation being introduced).

List of Appendices

None

Background Papers

House of Commons Briefing Note: Levelling Up and Regeneration Bill 2022-23: Progress of the Bill – 9 November 2022

<https://researchbriefings.files.parliament.uk/documents/CBP-9662/CBP-9662.pdf>

Ministry of Housing, Communities & Local Government (MHCLG) Guidance on Pavement Licences 26 July 2022

Business and Planning Act 2020 (Pavement Licence) (Coronavirus) (Amendment) Regulations 2022

Report to Council Meeting – 2 July 2020 (Minute Number 385/19)

Report to Licensing and Appeals Committee – 30 June 2021

Report to Licensing and Appeals Committee – 21 September 2022

Consideration of report by Council or other committee

Any increase to the application fee, (subject to enabling legislation being introduced), will need to be considered by the Governance and Resources Committee.

Council Approval Required

No.

Exempt from Press or Public

No

Temporary Pavement Licensing – Update Report

1. Introduction

1.1 Business and Planning Act 2020 and Business and Planning Act

Members will be aware that the Covid-19 pandemic affected most business-types across the economy, causing many to cease trading for several months, while others significantly modified their operations.

1.2 The introduction of the Business and Planning Act 2020 made provisions which enabled premises serving food and drink such as cafes, bars, hotels, restaurants and pubs, to seat and serve customers outdoors, on some areas of the public highway, by allowing temporary changes to local pavement licensing provisions.

1.3 The change was initially introduced to extend the physical area of the business premises, so that proprietors of smaller premises could continue to operate whilst maintaining social distancing. It was also intended that this benefit would expire on 30 September 2021.

1.4 The responsibility for administering the temporary licensing regime was transferred from County Councils to District and Borough Councils across England and Wales. In Derbyshire, the effect was that Derbyshire County Council would not be responsible for issuing these temporary pavement licences, but would be consulted by the District and Borough Councils when applications were received. The County Council would retain enforcement powers, to deal with any resulting obstruction of, or hazard on the highway etc...

1.5 Following the unprecedented and prolonged restrictions during the Pandemic, the temporary provisions were extended to expire at the end of September 2022. A report was considered at the September 2022 meeting which explained how a further extension to the deadline date had been introduced.

1.6 Members were informed that on 27th July 2022 the Government introduced the Business and Planning Act 2020 (Pavement Licence) (Coronavirus) (Amendment) Regulations 2022 which included provisions to extend the expiry date of the temporary pavement licensing regime to 30 September 2023. The extension was introduced, pending a decision regarding whether the responsibility will become a permanent one for district, borough and city councils, after September 2023.

1.7 Application Fees

The application fee for a licence under the Business and Planning Act 2020, was set in 2020 by the Government at a maximum of £100. This was to try and ensure recovery of as much of the cost of administering the new system as possible, balanced against not over-burdening business (hospitality), during difficult times.

1.8 On 2 July 2020, the full Council considered a report, and it was resolved that any fee at that time should be waived, to help businesses recover from the effects of the pandemic. The Council also waived the fee for applications received during 2021/2022 and 2022/2023, to continue to help business recovery.

1.9 In January 2022, a grant (New Burdens) of £4,123:00 was received from the Department for Levelling Up, Housing and Communities. This first payment included a one-off set-up cost associated with implementing the new process and roughly the costs for running the temporary scheme during the first year.

- 1.10 At the end of August 2022, a Section 31 grant payment of £2,419:00 was received for year 2. This payment was intended to absorb the approximate costs for continuing to operate the temporary pavement licensing regime, of processing, monitoring and enforcement not covered by any application fees charged.
- 1.11 Between October 2020 and September 2022, 36 licences were issued to food and drink premises across the main towns in the district. No fees were charged for these licences. We were expecting an increase in the number of applications during 2022/23, but this did not happen. Officers are proactively encouraging premises to apply during 2023/24, so there may be a significant increase which could have resource implications. It was resolved at the September 2022 meeting that the Governance and Resources Committee should be asked to consider an application fee for a pavement licence, as part of the Council's annual fee-setting report.
- 1.12 In February 2023, the Governance and Resources Committee approved a fee of £100 for pavement licence applications for 2023/2024 (Minute Number 308/22).

2. Key Issues

- 2.1 On 11 May 2022 the Levelling Up and Regeneration Bill 2022-23 (Levelling Up) was published which contained proposals to make the temporary pavement licensing changes in the Act permanent. This would transfer authority to grant pavement licences from Derbyshire County Council to the District Council.
- 2.2 The Levelling Up Bill is unlikely to complete its passage through parliament before the end of September 2023, and it is expected that the Department for Levelling Up, Housing and Communities (DLUHC) will shortly be laying regulations to extend the current temporary pavement licence measures beyond 1 October 2023 until 30 September 2024.
- 2.3 It was anticipated that Levelling Up would be in place before the current pavement licence provisions expire and the annual review of the application fee, carried out. There are suggestions within levelling up that the fees for applications could be increased to as much as £350 for renewals and £500 for new application. The current maximum fee remains at £100.
- 2.4 Levelling Up is expected to be enacted before 30 September 2024. As more information is made available, reports will be submitted to future meetings of this and the Governance and Resources Committee.

3. Options Considered and Recommended Proposal

- 3.1 It is a legal requirement under the regulations that the temporary licensing regime is extended to the end of September 2023. This provision may be extended until the end of September 2024 and it is recommended that food and drink businesses are reminded to make applications for pavement licences.

- 3.2 The Council waived the application fee during the financial years 2020-21, 2021-22 and 2022/23. The new burdens grant will have off-set some of the costs of setting up the system, and administering it during those years. As the number of applications expected during the next few months is likely to increase significantly (to approx. 60), it is recommended that the application fee of £100 permitted by Government, should be applied.

4. Timetable for Implementation

- The process for dealing with applications for pavement licences has been on-going since August 2020.
- The introduction of an application fee for pavement licences was approved by the Governance and Resources Committee in February 2023 as part of the annual fee setting process. Any change to the application fee would need to be considered by the Governance and Resources Committee as part of the annual fee setting process, which takes place at the end of the year.

5. Policy Implications

5.1 Licensing Policy

In 2020, the licensing regime temporary and a generic application procedure was prescribed in the Business and Planning Act and guidance that accompanied it. It was not considered necessary to introduce a formal policy at that time.

- 5.2 Although the legislation/regulations do not require councils to adopt a formal policy, the Government has indicated that this responsibility may become a permanent one for the District Council. If this does become the case, (formal announcement has not yet been made) then it is suggested consideration is given to developing a policy at that time. As with all licensing-type policies it would be useful for would-be applicants, existing licence-holders and the general public, to know how applications for pavement licences would be determined by the Council.

6. Financial and Resource Implications

- 6.1 The licensing service should set fees on a full cost recovery basis. A detailed cost recovery exercise has not been carried out, but it is estimated that the cost of processing a licence would be more than £100.
- 6.2 The Council received new burden and section 31 grants from the Department for Levelling Up, Housing and Communities, so will not be reimbursed for any costs if an application fee is not charged. Any shortfall in the cost of providing the service will need to be met/subsidised by the Council.
- 6.3 Therefore the financial risk has been assessed as low.

7. Legal Advice and Implications

- 7.1 This report provides an update on information received from Government in respect of a further extension to the temporary pavement licensing regime.

7.2 There are 2 recommendations in this report, one is for noting and the second is recommending further reports to be brought before Members in due course.

7.3 Therefore the legal risk in connection to this report has been assessed as low.

8. Equalities Implications

8.1 No direct impact.

9. Climate Change Implications

9.1 No direct impact.

10. Risk Management

10.1 The District Council has a statutory responsibility to undertake the duties outlined in the report.

Report Authorisation

Approvals obtained from:

	Named Officer	Date
Chief Executive	Paul Wilson	
Director of Resources/ S.151 Officer	Karen Henriksen	
Monitoring Officer	James McLaughlin	19/06/2023