

Joint Meeting of Cabinet Member for City Services and Cabinet Member for Policing and Equalities

31 July 2020

Name of Cabinet Member:

Cabinet Member for City Services – Councillor P Hetherton
Cabinet Member for Policing and Equalities – Councillor A S Khan

Director Approving Submission of the report:

Director for Transportation and Highways

Ward(s) affected:

All

Title: Temporary Pavement Licensing Policy

Is this a key decision?

No - Although the proposals affect more than two electoral wards, the impact is not expected to be significant.

Executive Summary:

On 25 June 2020, the Government announced a proposed relaxation to planning and licensing laws in order to help the hospitality industry recover from the Coronavirus lockdown. The Business and Planning Bill 2019-21 will make it easier for premises serving food and drink such as bars, restaurants and pubs, to seat and serve customers outdoors through temporary changes to planning procedures and alcohol licensing, as lockdown restrictions are lifted but social distancing guidelines remain in place.

The Bill proposes a temporary fast-track process for these businesses to obtain permission, in the form of a Pavement Licence, from the Council for the placement of furniture such as tables and chairs on the highway outside their premises which will enable them to maximise their capacity whilst adhering to social distancing guidelines.

In readiness for when the Bill is enacted, which is likely to occur at the end of July, a policy has been produced which sets out how the process for the new temporary Pavement Licence will operate in the city.

In order to give the greatest incentive to businesses, the draft Temporary Pavement Licensing Policy proposes that there will be no fee for applications for Pavement Licences in Coventry. Existing Tables and Chairs Licences will also be extended free-of-charge while the provisions of the Bill relating to Pavement Licences apply (until 30 September 2021). The Policy also specifies that the Council will normally grant Pavement Licences until 30 September 2021.

The Policy contains the Council's local standard conditions which will apply to all Pavement Licences. It also sets out the grounds on which an application can be refused and the circumstances in which a Pavement Licence can be revoked.

Recommendations:

The Cabinet Member for City Services and the Cabinet Member for Policing and Equalities are requested to:

- 1) Approve, in principle, the draft Temporary Pavement Licensing Policy (Appendix A to the report).
- 2) Delegate to the Director for Transportation and Highways the power to approve final amendments to the draft Policy once the Bill has been enacted to ensure that the Policy is fully compatible with the Act.

List of Appendices included:

Appendix A – Temporary Pavement Licensing Policy

Background papers:

None

Other useful documents

Business and Planning Bill 2019-21:

<https://publications.parliament.uk/pa/bills/cbill/58-01/0148/200148.pdf>

Pavement Licences – national draft guidance:

<https://www.gov.uk/government/publications/pavement-licences-draft-guidance>

Working safely during Coronavirus – national guidance for restaurants, pubs, bars and takeaway services:

<https://www.gov.uk/guidance/working-safely-during-coronavirus-covid-19/restaurants-offering-takeaway-or-delivery>

Has it been or will it be considered by Scrutiny?

No – however, the Chair of the Scrutiny Co-ordination Committee has been invited to this meeting for this item of business to agree the need for urgency such that call-in arrangements will not apply.

Has it been or will it be considered by any other Council Committee, Advisory Panel or other body?

No

Will this report go to Council?

No

Report title: Temporary Pavement Licence Policy

1. Context (or background)

- 1.1 On 25 June 2020, the Government announced a proposed relaxation to planning and licensing laws in order to help the hospitality industry recover from the Coronavirus lockdown. The Business and Planning Bill 2019-21 will make it easier for premises serving food and drink such as bars, restaurants and pubs, to seat and serve customers outdoors through temporary changes to planning procedures and alcohol licensing, as lockdown restrictions are lifted but social distancing guidelines remain in place. The measures included in the Bill look to modify provisions in the Licensing Act 2003 to provide automatic extensions to the terms of on-sales alcohol licences to allow for off-sales. It will be a temporary measure to boost the economy, with provisions lasting until the end of September 2021.
- 1.2 The Bill also proposes a temporary fast-track process for these businesses to obtain permission, in the form of a Pavement Licence, from the Council for the placement of furniture such as tables and chairs on the highway outside their premises which will enable them to maximise their capacity whilst adhering to social distancing guidelines.
- 1.3 Currently, tables and chairs permissions are granted as Tables and Chairs Licences by the Council in its capacity as Highways Authority, under Part 7A (s.115) of the Highways Act 1980. The initial licence fee for the first year of the licence is currently between £350 and £450, depending on the size of the proposed licensed area. The annual licence payable thereafter is currently £125. All fees are reviewed annually.
- 1.4 The current application process for Tables and Chairs Licences includes a statutory 28-day public consultation period. The Bill proposes a new consultation period for Pavement Licence applications of seven days (excluding public holidays), followed by a determination period of seven days (excluding public holidays).

2. Options considered and recommended proposal

- 2.1 In readiness for when the Bill is enacted, which is likely to occur at the end of July, a policy has been produced which sets out how the process for the new temporary Pavement Licence will operate in the city.
- 2.2 The Bill proposes a cap of £100 on the application fee for a Pavement Licence. In order to give the greatest incentive to businesses, it proposed that there will be no fee for applications for Pavement Licences in Coventry. Existing Tables and Chairs Licences will also be extended free-of-charge while the provisions of the Bill relating to Pavement Licences apply (until 30 September 2021), subject to no issues having arisen during the previous licence period.
- 2.3 The process for applications, including the information an applicant must provide, is set out in the new Temporary Pavement Licence Policy.
- 2.4 It also describes how members of the public can make representations on Pavement Licence applications and who the Council will consult before determining an application.
- 2.5 The Policy lists the issues the Council will take into account when considering the suitability of an application. These include public health and safety, public amenity and accessibility.

- 2.6 The expectation from Government 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. As such, the Council will normally grant applications until 30 September 2021.
- 2.7 In the event the location applied for is deemed unsuitable for a pavement café, or if relevant representations are made which cannot be mitigated by conditions, then the application may be refused. There is no statutory appeal process against a decision to refuse an application.
- 2.8 The Bill specifies that if the Council does not determine the application within the consultation and determination period of 14 days (excluding public holidays), the application will be deemed to have been granted. Therefore, the Policy sets out the Council's local standard conditions which will apply to all Pavement Licences, whether granted, or deemed to have been granted. The statutory no-obstruction condition and the National Condition (as referenced in the Policy) will also apply to all Pavement Licences. In some cases, additional bespoke conditions may be required. This will be determined when assessing an application, on a case by case basis.
- 2.9 The Policy sets out the circumstances in which a Pavement Licence may be revoked. Furthermore, the case remains that an obstruction of the highway is an offence under The Highways Act 1980 and will be dealt with by the Council as Highways Authority or the Police. A Pavement Licence does not confer on the Licensee immunity in regard to other legislation that may apply, e.g. Planning, Public Liability, Health & Safety at Work, Food Hygiene and Safety, Alcohol and Entertainment Licensing, social distancing controls, and applicants must ensure all such permissions, etc. are in place prior to applying.
- 2.10 The Cabinet Members are recommended to approve, in principle, the Temporary Pavement Licensing Policy.
- 2.11 As there are some discrepancies between the draft national guidance on which the Policy is based and the Business and Planning Bill 2019-21 as published relating to the length of the consultation and determinations periods, the Cabinet Members are recommended to delegate to the Director for Transportation and Highways the power to approve final amendments to the Policy once the Bill has been enacted, to ensure that the Policy is fully compatible with the Act.

3. Results of consultation undertaken

- 3.1 Internal consultation has been undertaken with all relevant Council departments, as well as key external stakeholders including West Midlands Police, West Midlands Fire Service, Coventry Business Improvement District and the Coventry City of Culture Trust.
- 3.2 It was not possible to undertake public consultation on the draft Policy due to the short timescale before the Pavement Licence provisions will become law.

4. Timetable for implementing this decision

- 4.1 Once approved by the Cabinet Members and the Director for Transportation and Highways, the Temporary Pavement Licensing Policy will take effect. This will enable officers to bring the application process into operation and consider and determine applications in a timely manner when the Act becomes law.

5. Comments from the Director of Finance and the Director of Law and Governance

5.1 Financial implications

In deciding not to charge a fee for pavement licences nor a renewal fee for existing Tables and Chairs Licences during the period to 30 September 2021, the Council will forgo income:

Licence	Estimated Impact	Fees Forgone
Existing tables and chair licences that would be due for renewal during this period	Approximately 17 licences affected	£2,125
New requests for temporary pavement licences	The level of interest to date has been low therefore numbers are expected to be between 10 and 30.	£1,000 to £3,000

It is not expected that the administration of the new pavement licences will result in additional costs to the Council as it is expected to be managed within existing staffing resources.

Therefore, the introduction of this policy is not considered to result in a material financial loss to the Council.

5.2 Legal implications

When enacted the provisions of the Business and Planning Act 2020, (likely to be enacted later this month on or around receiving Royal Assent), will see the introduction of the measures surrounding, amongst other things, the Pavement Licences referred to in this report. The policy document prepared by officers sets out the processes and procedures involved based on the contents of the Bill and guidance. Officers have also agreed a standard set of Terms and Conditions that will apply to the said Pavement Licences going forward.

Those Pavement Licences granted by the Council under the new Act will remain in force until 30th September 2021, unless the Act is extended.

Those licences granted pursuant to s.115 of the Highways Act 1980, will remain available on request

6. Other implications

How will this contribute to the Council Plan?

The Temporary Pavement Licensing Policy will enable eligible businesses in the hospitality sector to maximise their capacity by utilising parts of the public highway for pavement cafés whilst adhering to social distancing guidelines. The Temporary Pavement Licensing Policy will ensure that public health and safety is protected, public amenity is not infringed, and public access is maintained. By doing so, it will contribute to the following aims set out in the Council Plan:

- Supporting businesses to grow
- Developing the city centre
- Raising the profile of Coventry
- Helping local people into jobs
- Creating an attractive, cleaner and greener city

- Making communities safer
- Supporting the regeneration of Coventry's economy

6.1 How is risk being managed?

Due to the significantly shorter consultation and determination periods specified in the Bill, there is a risk that applications may not be determined within the required period and will therefore be deemed to have been granted. To mitigate this risk, the necessary processes and procedures will be put in place to ensure that representations from the public and other stakeholders can be made easily and in a timely manner, thereby enabling applications to be determined within the specified period. Furthermore, the Council's local standard conditions are set out in the Temporary Pavement Licensing Policy. As a result, these will apply to all Pavement Licences, whether granted, or deemed to have been granted.

6.2 What is the impact on the organisation?

The necessary processes and procedures will be put in place to minimise the amount of officer time required to process applications.

6.3 Equality Impact Assessment (EIA)

The local conditions specified in the Temporary Pavement Licensing Policy and the National Condition published by the Secretary of State will ensure that clear routes of access along the highway will be maintained, considering the needs of disabled people, and the recommended minimum footway widths and distances required for access by mobility impaired and visually impaired people. Barriers will be required to be used to assist to guide visually impaired people.

6.4 Implications for (or impact on) climate change and the environment

Conditions set out in the Pavement License Policy require that pavement cafés do not interfere with highway drainage arrangements, that the café area and surrounding area is kept clean and that waste is managed and disposed of appropriately.

6.5 Implications for partner organisations?

Conditions are included in the Pavement License Policy to protect public safety and ensure that pavement cafés do not create nuisance or generate anti-social behaviour.

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Councillor A S Khan	Cabinet Member for Policing and Equalities	-	17/07/2020	17/07/2020

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