

**Report for: Full Council**

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Date of Meeting:	17 July 2024
Subject:	<b>PERMANENT PAVEMENT LICENSING PROVISIONS</b>
Cabinet Member:	Cllr David Wulff, Cabinet Member for Quality (Cost) of Living, Equalities and Public Health
Responsible Officer:	Simon Newcombe, Head of Housing and Health
Exempt:	No
Wards Affected:	All wards
Enclosures:	None

### **Summary**

This report highlights the permanent provisions for pavement licensing introduced under the Levelling Up and Regeneration Act 2023 (the Act). This legislation makes permanent the temporary pavement licensing regime introduced under the Business and Planning Act 2020.

### **Recommendation(s):**

- 1. That Full Council delegate authority to the Head of Housing and Health for the administration and enforcement of the provisions within the Act. These delegations can then be sub-delegated to relevant officers.**
- 2. That Full Council delegate authority to the Head of Housing and Health for the setting of fees for pavement licences within the provisions of the Act.**

### **Section 2 – Report**

#### **1 Introduction**

- 1.1** The Government introduced pavement licences under the Business and Planning Act 2020 as an emergency measure, in response to the Covid 19 pandemic and opening up following national lock down, to permit hospitality businesses to operate on-street with minimal bureaucracy. It essentially

provided businesses such as cafes, restaurants, and bars with a streamlined and cheaper way to place furniture on the highway and operate following the pandemic.

- 1.2 Under the Business and Planning Act 2020, for a maximum £100 application fee, a licence could be sought to place furniture, such as tables, chairs, counters or stalls on the highway. The application process took a maximum of 14 days, which included a 7 day statutory notice period for public objections to the application. If the application was not determined in time it was deemed to have been granted.
- 1.3 Local authorities could grant applications for up to a period of 12 months and had the discretion to grant pavement licences for shorter periods of no less than three months.
- 1.4 The provisions within the new Act, which came into effect on 31 March 2024, make permanent the pavement licensing regime and have modified the Business and Planning Act 2020 in respect of the fees; application process; licence duration; and enforcement.
- 1.5 The Council already has a process in place to manage this regime following its original, temporary introduction. This process will therefore remain going forward with relevant amendments relevant to the new legislative provisions and fees (see below). Nonetheless, as such, this represents a new permanent duty for the Council as the Licensing Authority where longer licences and permanent provisions may make investment more attractive resulting in an increase in interest from premises.

## **2 Fees and Application Process**

- 2.1 Under the Act the application fee for an existing licensee seeking to renew their consent can be set up to a maximum amount of £350. For new applications (including applications from previous licensees whose licences have expired) the application fee can be set up to a maximum fee of £500. This is an increase from the current £100 application fee for a new licence set under the previous legislation as noted above.
- 2.2 Legally, fees must nonetheless be set on a justifiable, cost-recovery (non-profit) basis. Therefore, should this cost exceed the maximum amount permitted then the fee cannot be raised any higher, conversely if costs are lower than the maximum permitted then the lower fee should be charged. Applicable costs include those for implementation, processing and enforcement. Some of the enforcement powers are new and therefore best judgement will have to be applied on this element.
- 2.3 However, the Council have received only limited numbers of applications since temporary arrangements were introduced in 2020 with only 3 current licences in the district. In order to widen our data on potential costs we will work with those authorities locally with greater numbers via the Devon Licensing Officers Group (DLOG) to agree a common approach and consistent fee structure

where possible and adequately evidenced. It is noted that two authorities with more experience of pavement licensing (Exeter and Torbay) have recently published new fees which are set at the maximum level permitted.

- 2.4 Recommendation 2 will enable the Head of Housing and Health to set the fees as soon as the local cost-recovery and wider Devon position is fully understood.
- 2.5 On application, the consultation period is now 14 calendar days (excluding public holidays). A decision must then be made on the application within a further period of 14 days, beginning with the first day after the end of the public consultation period (excluding public holidays). This essentially means that the entire process must be administered within 28 days.

### **3 Licence Duration**

- 3.1 Under the Act a pavement licence can be granted for a maximum period of two years. There is no minimum licence duration. The pavement licence guidance (published 2 April 2024) states:

*To help support local businesses and give them more certainty, the expectation is that local authorities are pragmatic and will grant licences the maximum 2 years, unless there are good reasons for granting a licence for a shorter period such as plans for future changes in use of road space.*

- 3.2 The decision on what length licence should be granted is therefore one that should be based on the individual merits of the case. However, the starting point should generally be to grant the licence for 2 years unless there is good reason not to.

### **4 Enforcement**

- 4.1 The Act also gives local authorities new enforcement powers, including the ability to remove unlicensed furniture from the highway, following a notification process. If, after a notice is issued, furniture continues to be placed on the highway in violation of the notice, the authority may remove and store the furniture, recover the costs from the business for the removal and storage of the furniture and refuse to return the furniture until those costs have been paid. If within 3 months of the notice the costs are not paid, the authority can dispose of the furniture by sale or other means and retain the proceeds.
- 4.2 A policy around the application of these powers will be developed by officers in due course supported by wider dialogue with DLOG.

### **5 Previous report to Full Council**

- 5.1 A report was previously brought to Full Council on 29 July 2020 to highlight the pavement licensing provisions of the Business and Planning Act - as a pressing economic action by Government in response to the Covid pandemic - and request delegated authority for the administration and enforcement of it. This was approved.

5.2 Normally, licensing matters are referred to the Licensing Committee in the first instance but in 2020, the decision was made to refer the matter directly to Full Council. On this occasion, in consultation with Legal Services, it was felt appropriate to once again refer this directly to Full Council. This decision was made in light of the previous procedure followed and in order to expedite the process of implementing the permanent changes introduced by the Act which have now come into force. The Licensing Team will notify Members of the Licensing Committee of this prior to the Full Council meeting and confirm the decision made afterwards.

**Financial Implications:** The fee for applying for a pavement licence is capped at £500 for first time applications and £350 for renewals.

**Legal Implications:** The Act requires the local authority to administer these licences and as such it is a service that must be provided and this is not a discretionary function.

Section 229 of the Act introduces this change with effect from 31 March 2024.

**Risk Assessment:** The Act is permissive and makes permanent the streamlined and more cost-effective route for businesses introduced by the Business and Planning Act 2020. If the local authority does not determine the application in time (i.e. 28 days from the day after the application is made, excluding public holidays), the licence is deemed to have been granted (subject to any relevant conditions). This means that the Council must do its best to consider, consult and make a decision on all applications within this time frame.

**Impact on Climate Change:** There is no direct impact on climate change as a result of this report.

**Equalities Impact Assessment:** An equality impact assessment as this report applies to the direct implement of legislation where there is specific duty on the Council to do so as the Licensing Authority.

**Relationship to Corporate Plan:** This report links directly to the Licensing Authority functions of the Council with the primary aim of protecting public safety and ensuring the well-being of our community and licensed service users. It therefore contributes to the priority of Community within the current Corporate Plan.

### **Statutory Officer sign-off/mandatory checks**

**Statutory Officer:** Maria De Leiburne  
Agreed on behalf of the Monitoring Officer  
**Date: 09 June 2024**

**Chief Officer:** Stephen Walford  
Agreed by or on behalf of the Corporate Director  
**Date: 09 July 2024**

**Chief Officer:** Simon Newcombe  
Agreed by or on behalf of the Chief Executive  
**Date:** 07 June 2024

**Cabinet member notified:** Yes

### **Contact Details and Background Papers**

**Contact:** Tom Keating, Specialist Lead (Licensing), Public Health or Simon Newcombe, Head of Housing and Health  
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### **Background papers:**

Business and Planning Act 2020 -  
<https://www.legislation.gov.uk/ukpga/2020/16/contents/enacted>

Agenda and minutes of Extraordinary Meeting for the Adoption of the Local Plan on 29 July 2020 -  
<https://democracy.middevon.gov.uk/ieListDocuments.aspx?CId=156&MId=1335&Ver=4>

Levelling-up and Regeneration Act 2023 -  
<https://www.legislation.gov.uk/ukpga/2023/55/contents>

Pavement licences guidance -  
<https://www.gov.uk/government/publications/pavement-licences-guidance/pavement-licences-guidance> and <https://www.middevon.gov.uk/business/licensing/pavement-licence/>