



Report Reference Number: N/A

To: Chief Executive (urgency)
Date: 23 July 2020
Ward(s) Affected: Whole District
Author: Sharon Cousins – Licensing Manager
Status: Regulatory decision
Lead Officer: Alison Hartley – Solicitor to the Council

Title: Temporary Pavement Licences

Summary:

The Business and Planning Act 2020 (“the Act”) received Royal Assent on 22 July 2020 and came into force immediately. The aim of the Act is to support the economy to recover from the disruption caused by COVID-19 by introducing a number of urgent measures.

Part 1 of the Act includes a new licence known as a pavement licence and provides a streamlined fast track procedure for the grant of a temporary licence through an alternative legal process. As the country emerges from lockdown, pavement cafes have assumed a new importance given the strong scientific evidence of lower risk of spreading coronavirus outdoors and therefore it was recognised that there was a pressing need to allow the hospitality sector to cut through the existing red tape and offer an outdoor environment to customers.

The new temporary pavement licence allows an operator of a business selling food and drink to place removable furniture over certain highways adjacent to the premises in relation to which the application was made.

District Councils are responsible for issuing the new pavement licences. The existing permanent pavement licences are issued under the Highways Act 1980 by North Yorkshire County Council Highways Department.

The District Council, as licensing authority, must now determine the process and procedures to include application layout, conditions to be placed on the licence, fees, consultees, delegation, and duration of licence, as seen in the appendices to this report.

Recommendations

- I. To approve the application process outlined in the report including the standard conditions and the fee of £100 to enable temporary

pavement café licence applications to be determined by the Council. All licences to terminate on 30 September 2021.

- II. To delegate authority to the Solicitor to the Council to determine all applications (approval, refusal and revocations).

Reasons for recommendation

To enable the Council to urgently implement the requirements as prescribed by the Act in order to support local businesses to recover and succeed in these challenging times and for members of the public to benefit from this outdoor environment.

1. Introduction and background

- 1.1. The new temporary pavement licence allows an operator of a business selling food and drink to apply to the Council for authorisation to place removable furniture, such as tables and chairs on the highway adjacent to their premises to sell food and drink and/or for customers to use.
- 1.2. Existing permanent pavement consents are issued by North Yorkshire County Council Highways department, but the existing regime has been criticised as costly, and overly and unnecessarily time consuming. The Act introduces a new temporary pavement licence procedure to be managed by District Councils from the 22 July 2020.
- 1.3. Processes and procedures need to be approved before the Council can begin to process the new pavement licence applications.
- 1.4. The proposed fee to cover the application process is £100 and must be paid at the time of the application. No fees in excess of the £100 are permissible. It is proposed that the fee will not be refunded in the event of an application being refused.
- 1.5. Appendix 1 shows the proposed temporary pavement licence application and conditions. The applicant will be expected to provide the following to complete the application:
 - Completed application form
 - Fee of £100
 - Names and addresses of affected frontages
 - Information regarding the furniture to be used
 - Outline Location Plan (including any nearby vehicular accesses)
 - Detailed Plan showing proposed licensed area (edged in red)
 - Details of proposed perimeter railings
 - Photocopy of Public Liability Insurance for £5 million in any one claim
 - Copy of the risk assessment for serving food and drink in the pavement area
- 1.6. On the day that the completed application is made and validated, the applicant must affix a notice of the application (Appendix 2) on the

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premises and it must be easily visible and legible to the public. A 7 day consultation period will start the day after the application is submitted (excluding bank holidays). The applicant must ensure the notice remains in place until the end of the 7 day consultation period.

- 1.7. The Council must consult with NYCC as Highway Authority and any other such persons as the Council considers appropriate. The following agencies are proposed to be considered appropriate to consult with:
 - Highways
 - Planning
 - Environmental Health
 - North Yorkshire Police (Licensing)
 - Enforcement
 - Selby Vision
 - Selby District Disability Forum
 - Local Parish Councils
- 1.8. The Council is required to publish the application, in such a manner as it considers appropriate and publicise the fact that representations may be made during the consultation period and when that period comes to an end. Any member of the public can make representations about an application. All applications will be published on the Council's website and additionally, during the coronavirus outbreak advertised on the Council's social media site.
- 1.9. After the end of the public consultation period the Council may grant (wholly or in part) the application, impose conditions or refuse the application. The decision must be made within the determination period, which is a period of a further 7 days, starting the day after the public consultation period has ended. If a decision is not made within this determination period the application is deemed to be granted by the Council. A pavement licence deemed to be granted will have a duration of one year.
- 1.10. Local and national conditions are attached to the licence and can be seen on the application form (Appendix 1). The local conditions can be any that the Council considers to be reasonable. The Council may also add bespoke conditions to individual pavement licences.
- 1.11. When determining the application, the Council must have regard in particular to the needs of disabled people and the recommended distances required for access by disabled people as set out in guidance by the Secretary of State. Furthermore, the Council must have due regard to the public sector equality duty in the Equality Act 2010.
- 1.12. A specific duration of the pavement licence may be granted for a period that the Council determines (which must be a minimum of 3 months) or it can leave the duration open-ended, in which case it will expire on the 30

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September 2021. It is proposed that the Council will not specify a duration and therefore all licences will expire on the 30 September 2021 (unless this date is extended by the Secretary of State).

- 1.13. There is no power to vary the licence once granted or add further conditions.
- 1.14. The Solicitor to the Council will delegate decision making to the Licensing Manager where no objections have been made.
- 1.15. If a condition of the licence has been breached by the licence holder, the Council may either revoke the licence or serve a notice on the licence holder to remedy that breach. If the licence holders fails to remedy that breach, the Council may then revoke the notice or take the steps itself and recover the costs of doing so from the licence holder.
- 1.16. There is no statutory right of appeal and no internal council review process due to the compressed timescale of the 7 day determination period.

2. Legal Implications

- 2.1. As contained within this report.
- 2.2. The Council must follow the procedure as set out in the Act and any guidance.
- 2.3. Failure to determine an application within the 7 day determination period, the application will be deemed to be granted by the Council.

3. Financial Implications

There are no financial implications.

4. Policy and Risk Implications

There are no Policy and risk implications.

5. Conclusion

To approve the application processes and procedures, including the delegation, which will enable the Council to effectively process a pavement licence application within the tight timescales.

6. Appendices

Appendix 1 – Pavement Licence Application
Appendix 2 – Notice of Application

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