

**NEWCASTLE-UNDER-LYME BOROUGH COUNCIL**

**CORPORATE LEADERSHIP TEAM'S  
REPORT TO LICENSING & PUBLIC PROTECTION COMMITTEE**

**29 April 2024**

**Report Title:** Pavement Licensing – Levelling Up and Regeneration Act 2023

**Submitted by:** Service Director – Regulatory Services

**Portfolios:** Finance, Town Centres and Growth

**Ward(s) affected:** All

<b><u>Purpose of the Report</u></b>	<b><u>Key Decision</u></b>	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
<p>The inform Members that the Pavement Licensing regime introduced during the Covid pandemic has been made permanent with a number of amendments.</p>			
<p><b><u>Recommendation</u></b></p> <p><b>That Committee:</b></p> <ol style="list-style-type: none"> <li>1. <b>Note the contents of the report;</b></li> <li>2. <b>Agree to the proposed amended standard conditions for all licences;</b></li> <li>3. <b>Agree to the proposed fees for new and renewal applications; and</b></li> <li>4. <b>Agree to the proposed standard licence period.</b></li> </ol>			
<p><b><u>Reasons</u></b></p> <p>During the pandemic the Business and Planning Act 2020 introduced a temporary pavement licensing scheme to assist businesses. The scheme was successful and has now been made permanent by amendments made under the Levelling Up and Regeneration Act 2023, subject to a number of provisions which need to be considered.</p>			

**1. Background**

- 1.1 The Business and Planning Act 2020 (“BPA20”) received royal assent on 22<sup>nd</sup> July 2020 and made significant changes designed to help premises (including public houses, cafes, bars, restaurants, snack bars, coffee shops, and ice cream parlours) to survive and bounce-back from the pandemic lockdown.
- 1.2 It included a new “Pavement Licence” regime, to be administered by local authorities, designed to 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.

- 1.3 The pavement licence provisions were originally due to expire in September 2021 but due to the continuation of the pandemic and the success of the scheme it was extended multiple times.
- 1.4 As part of the Levelling Up and Regeneration Act 2023 (“LURA23”) the pavement licensing scheme has been made permanent, albeit with some amendments from the temporary provisions which are summarised in Table 1.

Table 1:

<u>Changes</u>	<u>Business Planning Act 2020</u>	<u>Levelling Up and Regeneration Act 2023</u>
Licence length	Max 1 year	Max 2 years
Fees	£0-£100	£0-£500 (new applications) £0-£350 (renewals)
Renewals	No renewal process	Renewal requirements introduced
Consultation time frame	7 days	14 days
Determination time frame	7 days	14 days
Public Space Protection Order (PSPO)	Not included as an exemption	Included as an exemption
Enforcement	Permits for revocation and serving of notices	Permits for revocation and serving of notices and also permits the removal of furniture, storage of it, recovery of costs incurred and disposal of it. Also that instead of revocation the licence can be amended in prescribed circumstances.

- 1.5 There are currently 12 pavement licences in force across the Borough and numbers have fluctuated throughout the temporary provisions. Some applications have been rejected for being in unsuitable locations, applicants not being able to provide necessary documentation or mostly because the proposed locations were located on private land and not a public highway.

## 2. Issues

- 2.1 In August 2020 the Committee agreed to set Standard Conditions in relation to pavement licences granted. Officers are proposing to amend the current conditions to remove reference to Covid 19 and address issues identified by Officers during the temporary provisions. A track changed copy of the proposed conditions is attached as **Appendix 1**.
- 2.2 The BPA20 provided that licences could only be granted for a maximum of 1 year, subject to the end date of the temporary provisions at the time. The LURA23 provides that licences can be issued upto a maximum of 2 years. Officers are proposing that all licences are issued for the full two year period unless circumstances are such that it would be appropriate for a lesser time period.

- 2.3** The BPA20 provided that local authorities could charge a maximum of £100.00 to applicants to consider applications and grant licence. Members of this Committee agreed with Officers that the Council would not charge a fee to assist businesses, even though the administration of the process would incur costs for staff to consider, issue and inspect applications and premises. LURA23 recognises that even those authorities that charged £100.00 under the temporary provisions were still operating the scheme at a loss and now provides that the Council may charge up to a maximum of £500.00 for new applications, and upto £350.00 for renewal applications. Having carried out an analysis of costs to full administer the regime Officers are proposing that new applicants should pay **£216.00** fee and renewal applicants should pay **£158.00** fee.
- 2.4** The BPA20 provided that the consultation period for each application was 7 days and then that the application must be determined within a further 7 days. The amendments in the LURA23 have extended both timescales to 14 days. In effect this doubles the maximum time frame for the Council to determine applications.
- 2.5** The Anti-social Behaviour Act 2014 (“ASBA14”) provides for certain premises to be excluded from ‘no alcohol’ conditions of a Public Space Protection Order. The BPA20 did not contain an amendment to the ASBA14 to include pavement licence areas as an exemption. The LURA23 has remedied that, so now alcohol consumption within a pavement licence area would not constitute a breach of a PSPO condition.
- 2.6** The BPA20 contained provisions that related to enforcement and circumstances where local authorities could revoke a licence. LURA23 has added provisions that allow local authorities to remove furniture from the highway, store it and require the licence holder to pay any associated costs in relation to this. The local authority, at the end of a 3 month period, can dispose of the furniture in any way it sees fit including selling and retaining the proceeds. In addition, the LURA23 has also provided that, in prescribed circumstances, the local authority can amend the terms of the licence with the licence holder instead of revoking the licence. The circumstances include:
- The highway is no longer suitable. E.g., the licensed area is no longer pedestrianised;
  - It comes to light that there are risks to public safety in keeping the areas as granted;
  - The grant of the licence has caused an unacceptable obstruction; or
  - The use is causing, or risks causing, anti-social behaviour or public nuisance. E.g. the use is increasing the amount of noise generated late at night and litter is not being cleaned up.

### **3. Recommendation**

That Committee:

- 3.1** Note the contents of the report;
- 3.2** Agree to the proposed amended standard conditions for all licences;
- 3.3** Agree to the proposed fees for new and renewal applications; and
- 3.4** Agree to the proposed standard licence period.

#### **4. Reasons**

- 4.1 The new provisions have already come into force and the Council are now statutorily obliged to consider and deal with pavement licences application made under the amended Business and Planning Act 2020.
- 4.2 The administration of the pavement licence regime requires staff time. The Council are currently operating at a loss when dealing with these applications and it is considered that the Council should recover its cost in administering the scheme.
- 4.3 There are a number of amendments to the previous temporary regime which require consideration and implementation.

#### **5. Options Considered**

- 5.1 To continue to not charge a fee for applications. This has been discounted as the Council are currently operating at a loss and the original decision to not charge was taken during the pandemic when hospitality businesses were suffering.
- 5.2 To issue licence for a lesser period than the maximum. This has been discounted as it will benefit businesses with security in the knowledge that they will hold the licence for the maximum period, subject to circumstances, and will benefit the Council in allowing officers to concentrate on the new applicants and active compliance rather than continually administering applications.

#### **6. Legal and Statutory Implications**

- 6.1 The legal and statutory implications are fully addressed in the body of this report.

#### **7. Equality Impact Assessment**

- 7.1 There are no issues arising from this report.

#### **8. Financial and Resource Implications**

- 8.1 There are resource implication in administering the pavement licensing regime which include advice, administration, compliance and enforcement. There are staff costs associated to this.
- 8.2 The new provisions allow for the Council to remove, store and ultimately dispose of furniture in prescribed circumstances. This will be a cost to the Council but the Act allows for full recovery of those costs from the licence holder.

#### **9. Major Risks & Mitigation**

- 9.1 The risk of not charging a fee is that the Council do not recovery costs in association with this area of work.
- 9.2 The risk of not issuing licences for the maximum term is that the regime may become burdensome and require additional resource to consider applications on a more frequent basis.

## 10. UN Sustainable Development Goals (UNSDG)

### 10.1



## 11. Key Decision Information

- 11.1 This is not a key decision.

## 12. Earlier Cabinet/Committee Resolutions

- 12.1 4th August 2020 – Licensing & Public Protection Committee  
12.2 27th July 2021 - Licensing & Public Protection Committee  
12.3 18th October 2022 - Licensing & Public Protection Committee  
12.4 5<sup>th</sup> September 2023 - Licensing & Public Protection Committee

## 13. List of Appendices

- 13.1 Appendix 1 – Proposed amended standard licence conditions.

## 14. Background Papers

- 14.1 [Business and Planning Act 2020 \(as amended\)](#)  
14.2 [Levelling Up and Regeneration Act 2023](#)  
14.3 [DLUHC Pavement Licence Guidance](#)