

**COVID 19 TACTICAL CO-ORDINATING GROUP****DATE: 30 JULY 2020**

<b>DECISION REQUEST / PROPOSAL</b>	To delegate authority to exercise and administer the Licensing functions provided under Part 1 of the Business and Planning Act 2020 and to seek approval for other consequential matters.
<b>DECISION PROPOSED BY</b>	Margaret O'Donnell
<b>SERVICE AREA AFFECTED</b>	Licensing
<b>IDENTIFIED CRITICAL SERVICE Y/N</b>	Yes

PLEASE NOTE: THIS IS NOT A COMMITTEE REPORT AND SHOULD OUTLINE ISSUES IN BRIEF FOCUSING ON KEY INFORMATION

**1. DECISION SUMMARY**

That approval be given to:

- (1) The standard conditions of the Council in relation to Pavement Licences being as attached in Appendix 1 to this report;
- (2) An application fee of £100 for pavement licences
- (3) Authorising the Licensing Manager to;
  - (a) exercise and administer the functions relating to Pavement Licences under Part 1 of the Business and Planning Act 2020 ("the 2020 Act"); and
  - (b) amend the standard conditions in accordance with such conditions as may be specified by the Secretary of State in accordance with future regulations that may be made pursuant to the 2020 Act and in order to reflect the need for further modifications in light of emerging best practice.

This decision will support the priority to support local businesses and the economy

**2. INFORMATION AND INTELLIGENCE SUMMARY**

- 2.1 The Business and Planning Act 2020 ("the 2020 Act") came into force on 22 July 2020. It is designed to help licensed premises to operate under the current social distancing measures. The provisions set out in the 2020 Act include a new provision for the granting of Pavement Licences as well as modifications to the Licensing Act 2003 that will allow operators with existing alcohol on-sales licences to also serve alcohol for consumption off the premises and to make deliveries.

- 2.2 The new pavement licence regime is for the Council to administer. It is 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. The measures in the 2020 Act are designed to support businesses selling food and drink such as cafes, pubs and restaurants. The 2020 Act introduces a temporary fast-track process for businesses to obtain permission, in the form of a “pavement licence”, from the local council for the placement of furniture such as tables and chairs on the pavement outside their premises. It is anticipated that this will enable businesses to maximise their capacity whilst adhering to social distancing guidelines. The process for businesses to obtain similar licences prior to the 2020 Act coming into force could be costly and time-consuming.
- 2.3 The provisions of the 2020 Act in respect of pavement licences are new provisions which do not amend or supersede any previous legislation. An urgent decision is needed to delegate to the Licensing Manager the necessary powers to discharge the relevant functions
- 2.4 No new delegated powers are required in relation to the modifications to the Licensing Act 2003 that have been made by the 2020 Act as there are already provisions within the Council’s Constitution that enable the Licensing Manager to exercise powers in accordance with legislation as amended or modified.
- 2.5 The 2020 Act includes temporary measures to apply a new process for the application for a pavement licence which are as follows:
- The maximum fee that can be charged by the local authority is £100.
  - The application must be made electronically, providing specific details set out in the Act.
  - The application must be advertised on the premises and provide a 7 day consultation period beginning the day after the application is made;
  - The Council must publish the application electronically;
  - The Council must then determine the application within 7 days after the end of the consultation period. If there is no determination within this period, the application is deemed to be granted;
  - The pavement licence must be granted for a minimum period of 3 months and may be granted up until 30 September 2021.

- 2.6 A pavement licence may be granted by the Council subject to such conditions as it considers reasonable. The Council may publish conditions subject to which it proposes to grant pavement licences. Where a pavement licence is deemed to be granted, it is deemed to be subject to any standard conditions which are published by the Council. Proposed standard conditions of the Council are attached as Appendix 1 to this report. The Secretary of State has power to make regulations specifying conditions for pavement licences. Authority is therefore sought for the Licensing Manager to amend the standard conditions in order to reflect such future regulations.
- 2.7 Smoking is a significant cause of preventable ill health and premature mortality in Wirral, causing 1,817 deaths in 2016-18. It is estimated that one in five deaths each year in Wirral are related to smoking, making it the single greatest risk factor for poor health and early death. Furthermore, smoking has considerable health and social costs both for the individual smoker and society, not to mention the burden on the UK economy, estimated at £12.5 Billion per year. The total current estimate of smoking cost on the Wirral is just over £70 million per annum. Smoking also causes health risks to people through passive smoking.
- 2.8 The advice of Public Health England is that vaping regulated nicotine products has a small fraction of the risks of smoking, but this does not mean it is safe. Public Health England also advise that people who have never smoked should be encouraged not to smoke and not to vape. Furthermore, second hand vaping fumes can be a nuisance and annoyance to non-vapers. Non vapers may also perceive a risk from second hand vapour.
- 2.9 Public Health England advice on smoking and coronavirus (COVID-19) is that smokers generally have an increased risk of contracting respiratory infection and of more severe symptoms once infected. COVID-19 symptoms may, therefore, be more severe for smokers. It is currently unknown what effect vaping has on people may in terms of susceptibility to severe disease if infected with COVID-19.
- 2.10 Having regard to the considerations set out in paragraph 2.7, 2.8 and 2.9 of this report, one of the recommended conditions will have the effect of prohibiting smoking and vaping in permitted areas.

- 2.11 Where a pavement licence is granted, or deemed to have been granted, any planning permission for anything done under the licence is deemed to have been given.
- 2.12 Where a pavement licence is in effect, a street trading licence is not needed for any activity authorised by the pavement licence.
- 2.13 A pavement licence may be revoked:
- (a) If a condition of the licence has been breached (the Council may require steps to be taken to remedy the breach short of revoking the licence);
  - (b) If the Council determines that the furniture is giving rise to risks to public health and safety or risks causing a public nuisance;
  - (c) If the Council is satisfied that the applicant did not put up a notice to publicise the application as required, or if anything in the application was false or misleading.
- 2.14 The Council will still retain its power under section 149 of the Highways Act 1980 to remove furniture placed on the highway should it constitute a nuisance or danger under that section.
- 2.15 The 2020 Act sets out other relevant licensing provisions relating to the sale of alcohol for consumption off the premises.

### **3. RISK ASSESSMENT / H&S AND STRATEGY FOR IMPLEMENTING DECISION (staff implications, asset implications, benefits etc)**

- 3.1 There will be staff implications in terms of processing applications and administering and enforcing pavement licences which can be resolved within current resources.
- 3.2 Enforcement will be carried out having regard to the criteria summarised within the report and the health and safety of those who are using the facilities which are enabled by pavement licences will be a paramount concern.

### **4. WHAT POWERS, POLICIES AND PROCEDURES HAVE BEEN CONSIDERED**

- 4.1 The procedures outlined in the report are new and arise from the 2020 Act. There is little discretion in terms of implementation of the provisions in relation to pavement licences save for the element of officer discretion in terms of enforcement.

## **5. IDENTIFICATION OF CONTINGENCIES OR OTHER OPTIONS**

**(also detail what work any affected staff would undertake)**

- 5.1 Most of the recommendations set out within the report are of necessity and the scope for other options is limited. There is discretion for the Council to impose different standard conditions. The standard conditions that are suggested are considered appropriate and proportionate.
- 5.2 There is no statutory right of appeal in respect of any decisions that may be made on behalf of the Council in respect of pavement licences. The Council could introduce a non-statutory right of appeal. It is suggested, given the speed within which the Council has to implement these provisions, that such proposal should be kept under review.

## **6. FINANCIAL IMPLICATIONS (APPROXIMATE / PROJECTED)**

- 6.1 The council has a discretion to charge a fee up to £100. The cost of processing an application for a Pavement Licence is estimated to be £138. This does not include the costs of consulting with relevant officers outside of the Licensing Service or the costs of monitoring compliance with the conditions of the licence. It is therefore considered necessary and appropriate to set the fee for a Pavement Licence at £100.

Name of Finance Officer involved in decision:

## **7. LEGAL IMPLICATIONS**

- 7.1 The report has been drafted having regard to the provisions of the Business and Planning Act 2020.

Name of Legal Officer involved in decision: Matthew Neal

<b>DECISION PRESENTED TO TSG ON</b>	<b>Date</b>
<b>DECISION OF TSG</b>	<b>APPROVED</b> <b>REJECTED</b> <b>MORE INFO REQUIRED</b>

## **Appendices**

Appendix 1- The standard conditions of the Council

## **APPENDIX 1- BUSINESS AND PLANNING ACT 2020**

### **PAVEMENT LICENCE**

#### **STANDARD CONDITIONS**

The following standard conditions will apply to any Pavement Licence.

Additional conditions may also be applied and attached to individual licences.

1. Tables and chairs must be set out in accordance with the Government's guidance that is in force at the particular time, in respect of social distancing.
2. The Licence Holder shall ensure that at all times customers are instructed, reminded and encouraged to comply with social distance guidelines.
3. The Licence Holder shall ensure that the premises operates in accordance with Government's guidance applicable at the relevant time, in relation to COVID-19 in respect of operating the Licence Holder's type of business.
4. The Licence is issued to permit the placement of furniture on the highway in accordance with the plan attached to this licence, provided that such items are displayed and sited exactly as defined in this licence.
5. The Licence Holder shall ensure that any furniture is at all times safe and suitable for its purpose, clean, tidy and maintained to a high standard.
6. The Licence Holder must not make or permit to be made any alterations or additions to the Permitted Area without the prior consent in writing of the Council.
7. The Licence Holder shall ensure that no exposed cabling is laid across the highway.
8. The Licence Holder shall ensure that emergency access routes are kept clear and unobstructed at all times.
9. The Licence Holder shall ensure that no anti-social activities/behaviour takes place within the Permitted Area.
10. This Pavement Licence must be kept on the premises at all times so that it can be inspected by an Authorised Officer.
11. No items are authorised to be attached or affixed to any highway structure, street furniture, post or column.
12. The Licence Holder must manage waste generated by their business to ensure that the Licensed Area and at least 5 metres beyond remains free from litter. The Licence Holder shall ensure that regular collections of windblown, discarded and smoking related litter take place in the immediate vicinity of the Permitted Area and at least 5 metres surrounding it even if it is not directly related to the business.
13. The granting of a Pavement Licence does not imply any permission to excavate, mark, alter or damage the highway in any way. The Licence Holder will be liable for

the costs of any repairs undertaken by the Council as a result of any damage arising from the use of the Permitted Area.

- 14.** The Licence Holder shall ensure that all items are immediately removed from the Permitted Area if the Council, a statutory undertaker or other authorised organisation have need to undertake works on, under or adjacent to the highway, at any time and for any period, without the Council being liable for any losses claims demands costs or expenses whatsoever.
- 15.** The Licence Holder shall be liable for and shall indemnify and keep indemnified the Council against any losses claims demands proceedings damages costs charges and expenses whatsoever arising under any statute or at common law in respect of personal injury to or death of any person whomsoever or loss of or damage to any property whatsoever which arises out of or is connected with this Licence.
- 16.** The Licence Holder shall at all times maintain in force such policies of public liability insurance as shall provide full insurance and indemnity against the Licence Holder's liability in the sum of at least £5,000,000 (Five Million Pounds) in respect of any one occurrence or series of occurrences arising out of one event. A copy of such policy of insurance must be available for inspection as and when required by the Council.
- 17.** The Licence Holder shall ensure that neither smoking or vaping takes place within the Permitted Area.