

Full Licensing Committee



Report of: Service Director – Growth and Regeneration

Title: Pavement Licensing Policy

Ward: N/A

Officer Presenting Report: Shaun Taylor, Highway Maintenance Group Manager

Contact Telephone Number: NA

Recommendation

Approve consultation on the draft pavement licensing policy set out at Appendix A.

Summary

The original policy was introduced to sit alongside the Business and Planning Act 2020, which streamlined the process for applying for removable furniture on the highway. This Act was introduced during the Covid-19 pandemic to permit a shorter process for applications, to facilitate outdoor dining when restrictions were in place on inside areas. The Act has been made permanent under the Levelling Up and Regeneration Act 2023, with commencement dates of the new provisions to be determined by the Secretary of State. The revised policy provides more detail on pavement licensing, including information on furniture, planters and heaters.

Background

1. Local authorities have had the ability to manage removable furniture on the highway under the Highway Act 1980 for a number of years, however the process was lengthy and not particularly straightforward.
2. Towards the start of the Covid-19 pandemic the government introduced a range of measures to facilitate outdoor hospitality, including to streamline the process for obtaining permission for removable furniture on the highway. This was introduced under the Business and Planning Act 2020 as a short-term measure.
3. As the restrictions from the pandemic remained in force the government extended the Act several times, Parliament has now made it permanent through the Levelling Up and Regeneration Act 2023, which amends the 2020 Act to remove the time limitations and alter upper fee limits. The commencement of the amended provisions will be determined by regulations issued by the Secretary of State. In the meantime the 2020 Act remains in force until 30 September 2024.
4. The Act already provides specific requirements in respect of consultation and determination but does not specify that a policy is required in respect of removable furniture. The government has also issued statutory guidance in respect of the current requirements under the Act. The Council must have regard to this guidance when processing and determining applications under this Act.
5. The current policy guides the Council when determining applications made in connection with the Business and Planning Act 2020 in relation to the placing of removable furniture on the highway. The policy covers all applications for pavement licences under this Act which allows the holder to place removable furniture on part of a relevant highway adjacent to the premises to which they relate for specific purposes.
6. The policy does not apply to non-removable furniture, parasols over 1.8m in diameter, sided or un-sided structures, or decking. These matters are dealt with under separate legislation and will require separate permissions.
7. The amended policy goes into further detail about the considerations which will be taken into account when determining applications. In particular it highlights any restrictions on the type of furniture, planters, heaters, signage, fencing and bins which the council might consider. It is designed to provide a clear framework for applicants before they apply for a pavement licence, as well as an indication to residents, businesses and users of the area as to what to expect from pavement licensing.
8. The proposed policy along with a summary of changes is attached at Appendix A and B. Standard conditions to be attached to pavement licences are attached at Appendix C.

Consultation

9. There is no statutory obligation to consult on policies before introducing them, but it is normally considered best practice. The draft policy before the committee today replicates closely the requirements and considerations in both the Act and the statutory guidance and sets out the considerations of the council when determining applications. It is important for the council to

ensure that whilst it is promoting outdoor hospitality it also balances the needs of other users of the highway. It is recommended that the policy is consulted upon with a range of persons for a period of 12 weeks.

10. Officers recommend consultation with the following:

- a. Members of the public
- b. Current pavement licence holders
- c. Relevant equalities groups
- d. Trade organisations and representatives
- e. Expert stakeholders such as Environmental Health, Planning, Licensing, Avon and Somerset Constabulary and Avon Fire and Rescue

Summary of Equalities Impact of the Proposed Decision

11. The authority must consider the public sector equality duty before making any decisions. An equalities impact assessment has been undertaken in respect of the consultation proposal and doesn't highlight any areas for concern in respect of consulting. In particular officers would seek to engage equalities groups relating to disability to ensure that the needs of disabled persons, in particular those using mobility aids and those with visual impairments, and carers of disabled persons are captured in the responses.

12. A copy of the Equalities Impact Assessment is included at Appendix D.

Recommendation

13. That the committee approve the consultation on the draft policy for 12 weeks.

Legal and Resource Implications

Legal

The proposals set out in the report are lawful.

There is no statutory requirement to consult upon the proposed changes to the pavement policy. However, should a consultation process be undertaken, case law guides on what constitutes lawful consultation and from this some key guiding principles have been established, in summary that those being consulted must:

- (i) be provided with material upon which a decision is likely to be made;
- (ii) be given enough time for intelligent consideration of that material and to respond to it;
- (iii) be given the opportunity to make considered representations;
- (iv) have their representations conscientiously considered.

It is therefore important that members are satisfied that that any consultation process allows sufficient time to enable any person or body wishing to make representations to obtain relevant material, to consider it and to put their representations to the Council.

Lynne Harvey – Specialist Lawyer

Financial**(a) Revenue**

Not applicable

(b) Capital

Not applicable

Land

Not applicable

Personnel

Not applicable

Appendices:

Appendix A – Proposed pavement licensing policy

Appendix B – Summary of changes

Appendix C – Standard conditions

Appendix D – Equalities Impact Assessment

LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985**Background Papers:**

None.