

<b>Report To:</b>	<b>LICENSING COMMITTEE</b>	<b>Date:</b>	<b>30.07.2020</b>
<b>Heading:</b>	<b>BUSINESS &amp; PLANNING ACT 2020: TEMPORARY PAVEMENT LICENCES</b>		
<b>Portfolio Holder:</b>	<b>REGULATORY SERVICES</b>		
<b>Ward/s:</b>	<b>ALL</b>		
<b>Key Decision:</b>	<b>YES</b>		
<b>Subject to Call-In:</b>	<b>NO</b>		

### **Purpose of Report**

The Business & Planning Act 2020 delegates the administration and enforcement of Temporary Pavement Licences to local councils. As such Ashfield District Council will become responsible for this licensing function, and is required to administer and enforce this licensing scheme.

### **Recommendation(s)**

**It is recommended to:**

- a) Note the content of this report;**
- b) Approve the administration and enforcement of the Temporary Pavement Licence function by the Licensing Department as set out in this report.**
- c) Approve the setting of a no charge application fee (until 30.09.2021) in order to reduce the financial burden on businesses, and to promote applications for a Temporary Pavement Licence; and**
- d) Delegate authority to the Director of Place & Communities to determine applications made for a Temporary Pavement Licence.**

### **Reasons for Recommendation(s)**

The powers to administer and enforce Temporary Pavement Licences within the Council's area are conferred by the Business & Planning Act 2020 to Ashfield District Council. The Act requires the Council to adopt a scheme in order to manage this new licensing regime.

### **Alternative Options Considered**

**Do nothing:** not recommended for the following reasons:

1. Failure to adopt a scheme to approve applications will result in the Council being unable to properly administer Temporary Pavement Licences in a proactive way to assist local businesses to place Street Furniture on the highway to promote “safe venues” for their customers to eat and drink.
2. Failure to adopt a scheme will result in the Council being unable to set and enforce conditions on those premises placing Street Furniture on the highway.
3. Failure to adopt the scheme will result in the Council hindering the Governments strategy to assist business economic recovery during and following the Covid-19 pandemic.
4. Failure to adopt and promote the scheme will result in financial hardship to venues, owing to the requirement for indoor use to adhere to Government social distancing requirements, thus reducing indoor customer capacity and as such levels of income.
5. Failure to adopt a scheme will hinder the Council’s own vision for the transformation of the locality, as this scheme enables the Council to take back control of our highways (especially in the Town Centres), which has until now been carried out by Nottinghamshire County Council.
6. Failure to adopt a scheme will hinder the Council’s desire to promote a vibrant and sustainable economy (especially in the Town Centres) which in turn may increase the desirability of the locality for investors and consumers.

### **Detailed Information**

The Business & Planning Act 2020 (“The Act”) (attached at **Appendix One**) delegates the issue, administration and enforcement of Temporary Pavement Licences to Ashfield District Council. The Act also amends the list of non-executive Licensing functions set out in Schedule 1 of the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (as amended) to include functions relating to Pavement Licences. This brings the scheme under the Licensing Committee’s remit as provided for in its terms of reference under the Council’s Constitution.

A Temporary Pavement Licence permits a pub, bar, restaurant, café, snack bar, coffee shop, or ice cream parlour to place street furniture in an approved location on the highway (defined as generally being footpaths restricted to pedestrians, or are roads and places to which vehicular access is restricted or prohibited).

Such permission **will be in place only until 30<sup>th</sup> September 2021** (though the Government may seek to extend this period). Applicants seeking to renew such a licence will then need to apply to Nottinghamshire County Council for a Pavement Licence to be issued under Part 7A Highways Act 1980 (which has been the norm prior to the Business & Planning Act 2020).

The intention of the Act is to promote the serving and consumption of food and drink outdoors at such establishments, in order to promote public safety in a Covid-19 world, and to give a boost to the hospitality sector as indoor capacities will be limited owing to social distancing requirements.

It also hopes to boost the vibrancy of localities by creating a “**vibrant alfresco experience for all**” (Alok Sharma MP – Secretary of State). In order to support this aim locally and to assist businesses, it is proposed that **no fee be charged** for the provision of this function (the Act permits a fee of up to

£100.00 to be charged). Should the Government extend the scheme beyond 30<sup>th</sup> September 2021, then consideration as to setting a fee will be given nearer that date (for new and renewal applications).

The Act places **mandatory requirements** on all Temporary Pavement Licences that no obstruction shall be caused to any person using mobility equipment, and that non-smoking areas be provided for customers within the designated area.

The Act also enables the Council to set “**standard conditions**” (attached at **Appendix Two**) and it is proposed that these are consistent across Nottinghamshire (as devised by the Licensing Managers at Broxtowe and Ashfield – but adapted from those in use by Nottinghamshire County Council who until the Act came into force administered such a licensing function). The Conditions promote the interests of public safety, and tackle potential issues relating to noise nuisance, littering and anti-social behaviour.

The Council has the power to **revoke a licence** should any of the conditions attached to it be breached. The Council, and its partners at Highways and the Police will work together to promote and enforce the requirements of the new legislation.

The Act also amends the Licensing Act 2003 (already a Council function) by automatically permitting licensed alcohol premises to provide alcohol for “off-sales”. It is important to note that the Temporary Pavement Licence is solely to permit the provision of Street Furniture on the highway – a Premises Licence or Club Premises Certificate issued under the Licensing Act 2003 must also be in force to permit the sale of alcohol.

With regard to the administration of the Temporary Pavement Licence scheme, the Act will put in place a fast-track application process. Applications will be subject to a 7 day consultation, and all applications must be determined within 7 days of the consultation closing.

Contentious applications where representations are received will require determination by way of a Hearing that will need to be speedily convened in order to meet with the requirements of the Act. It is proposed to delegate authority to determine applications for Temporary Pavement Licences to the Director of Place & Communities.

Should an application not be determined within the required statutory timeframe, it shall be deemed to have been granted.

The Council's Licensing Team will administer and enforce the provisions of the scheme, and will consult on all applications with colleagues in the Community Protection Team, Environmental Health Team, Environmental Protection Team, Environmental Services Team, Planning Team (though note that planning is deemed to be granted under the provisions of the Act), the Police and the Highways Team at Nottinghamshire County Council.

The Licensing Team has already devised application forms, site notices, licence template, software procedures, a dedicated web page ([www.ashfield.gov.uk/pavementlicences](http://www.ashfield.gov.uk/pavementlicences)) and informed the consultation group ahead of the Council approving the recommendations contained within this report, in order to be ready to accept applications immediately.

Whilst online applications will be the expected norm, manual applications will be facilitated in order to ensure all those wishing to make a Temporary Pavement Licence application are able to do so.

## **Implications**

### **Corporate Plan:**

The Council has a duty to carry out its licensing functions in accordance with the relevant legislation and regulations in force for each of the functions detailed within this report.

By carrying out its licensing functions, the Licensing Authority will contribute towards the reduction of crime and disorder within the District, and seek to improve community safety and environmental quality, whilst in turn seeking to promote a vibrant and sustainable local economy.

### **Legal:**

Any legal implications are already covered within this report.

### **Finance:**

The additional cost of administration will be contained within existing budgets. As such there are no financial implications contained within this report.

A “nil” fee has been proposed to assist businesses apply for a Temporary Pavement Licence without adding additional financial burden to them as they emerge out of lockdown.

This report is effective from **30<sup>th</sup> July 2020** and has the following financial implications.

<b>Budget Area</b>	<b>Implication</b>
General Fund – Revenue Budget	None
General Fund – Capital Programme	None
Housing Revenue Account – Revenue Budget	None
Housing Revenue Account – Capital Programme	None

### **Risk:**

<b>Risk</b>	<b>Mitigation</b>
The Council has a statutory duty to carry out its licensing functions.	Approved processes, procedures and policies are in force to ensure that the Licensing Authority minimises any risks it may be exposed to when carry out its licensing functions and decision making processes.

### **Human Resources:**

There are no direct HR implications contained within this report.

### **Environmental/Sustainability**

The Act seeks to provide a boost to the hospitality sector during the Covid-19 pandemic, and puts measures in place to promote the environment (i.e. conditions re: litter, public safety, preventing nuisance), as well as promoting outdoor well-being.

### **Equalities:**

There no diversity or equality implications contained within this report.

### **Other Implications:**

None

### **Reason(s) for Urgency**

The Business & Planning Act 2020 has been fast-tracked through Parliament and the House of Lords in order to enable businesses to apply for and benefit from the provisions contained within the Act.

### **Reason(s) for Exemption**

Not applicable

### **Background Papers**

**Appendix One:** Business & Planning Act 2020

**Appendix Two:** National & Standard Conditions attached to all Temporary Pavement Licences

### **Report Author and Contact Officer**

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