

North Tyneside Council

Report to Director of Regeneration and Economic Development

Date: 16 September 2024

Title: Pavement Licensing

Report by: Paul Watson, Head of Highways and Transportation

Report to: John Sparkes, Director of Regeneration and
Economic Development

Wards affected: All

PART 1

1.1 Executive Summary:

Following the passing of the Business and Planning Act 2020 (“the 2020 Act”), a new national procedure came into effect. This procedure enabled relevant premises to apply for pavement licenses for customers to sit outside, to support ‘social distancing’ during the Covid-19 pandemic. This was envisaged to be a temporary initiative during the pandemic. However, the pavement licensing provisions in the 2020 Act have been extended each year since, by the Secretary of State, and have therefore been in force since July 2020.

In April 2024, the Government announced that the pavement licensing regime would become permanent. To that end, the Levelling-up and Regeneration Act 2023 (“the 2023 Act”) repealed section 10 of the 2020 Act which had, until its repeal, limited the lifetime of the pavement licensing provisions under the 2020 Act.

The 2023 Act also amended the level of fees that local authorities are permitted to charge for processing pavement licence applications. Until the amendment to the 2020 Act, the maximum that could be charged was £100. It

is important to note that up until this point in time, the Authority has made no charge in relation to pavement licence applications.

Given that the pavement licensing regime is now permanent, it is appropriate for the Director of Regeneration and Economic Development to determine:

- a) if the existing standard licence conditions previously approved and published by the Authority, should remain in place or be amended;
- b) if the form of the Notice of Application to be displayed at premises should remain in its current form, or be amended;
- c) what the maximum duration of a pavement licence issued in North Tyneside should be; and
- d) what application fees should apply for new pavement licence application, and for the renewal of existing pavement licences, in North Tyneside.

1.2 Recommendation(s):

It is recommended that the Director of Regeneration and Economic Development agrees that:

1. the pavement licence conditions appended to this report at Appendix 1, should apply in relation to any pavement licences granted in North Tyneside;
2. the Notice of Application to be displayed at the relevant premises by a person applying for a pavement licence in North Tyneside will be in the form set out in Appendix 2 of this report;
3. the maximum duration of any pavement licences granted in North Tyneside is 2 years from the date of grant; and
4. the application fee for a pavement licence made by a person who already holds a pavement licence and their application is in respect of the premises to which the existing licence relates (whether or not it is a renewal application) be set at £102.00; and
5. the application fee for a pavement licence made by a person who does not already hold a pavement licence in respect of the premises to which their application relates be set at £146.00.

1.3 Forward Plan:

Twenty-eight days' notice of this report has been given and it first appeared on the Forward Plan that was published on 2 August 2024.

1.4 Council Plan and Policy Framework

The proposals in this report relate to the following priority in Our North Tyneside, the Council Plan 2021 to 2025.

- A thriving North Tyneside
 - We will bring more good quality jobs to North Tyneside – by helping local businesses to grow and making it attractive for new businesses to set up or relocate in the borough.

1.5 Information:

1.5.1 Legal framework

Part 1 of the 2020 Act came into force in July 2020 and introduced a new type of licence in England and Wales known as a 'pavement licence'. Such a licence permits businesses that sell and serve food or drink supplied from their premises, to place removable furniture on part of a relevant highway (footway) adjacent to such premises, for use by their customers to consume the food and/or drink.

Under the 2023 Act, a local authority is now able to grant pavement licences for a duration of its choosing, up to a maximum of 2 years. The Government has set out in its updated guidance which encourages local authorities to grant licences for a maximum period of 2 years, unless there is a good reason to do otherwise. It is proposed that pavement licences issued in North Tyneside should be for a maximum duration of 2 years.

1.5.2 Licensing process

The 2020 Act set out the pavement licence application process to be followed by applicants and local authorities. It includes provisions about notification of applications and the information that must be included in an application, submitted to a local authority. In relation to the Notice obligations, an applicant must fix a notice of the application to the premises, so that the notice is readily visible to, and can be read easily by members of the public who are not using the premises. That Notice must be in the form specified by

the Authority. The proposed Notice of Application which the Authority would require applicants to display, is attached to the report at Appendix 2. The 2023 Act extended the period of time for the Authority to determine an application for a pavement licence from 7 to 14 days.

The legislation permits the Authority, when granting a pavement licence, to attach such conditions to the licence as it considers reasonable. The Authority has published conditions which it proposes to attach to all pavement licences which it grants. These are in effect the “standard conditions” that would apply to all pavement licences granted by the Authority and should be published on the Authority’s website, alongside details of the application process.

A delegated decision taken in September 2023 by the Director of Regeneration and Economic Development, specified the “standard conditions” which were to be attached to all pavement licences. The conditions proposed to be attached to new pavement licences, are appended to the report at Appendix 1. These conditions are similar to the previous conditions agreed by the Director, with limited amendments.

When assessing an application for a pavement licence, the Authority must consider any representations made to it within a set time of the application being made (the “consultation period”), and consult such other persons on the application, as the Authority considers appropriate. During the consultation period, the Authority must also ensure that the public’s right to use the highway (pavement) is not detrimentally affected if a licence is granted to operate a licensed area on the pavement. The Authority must also be satisfied that the pavement area is located, designed and managed in a way that takes into account the needs of all highway users, including people with disabilities.. The 2023 Act has extended the consultation period from 7 to 14 days.

It must also be recognised that a pavement licence will only permit the placing of furniture on the pavement and nothing more. A pavement licence does not obviate the need for a person responsible for the premises to comply with any other regulatory requirements that they must meet. This includes the need to obtain a premises licence under the Licensing Act 2003 to sell alcohol from the premises, or the need for food business registration if food is being prepared and sold from the premises.

1.5.3 Licence fees

Prior to the implementation of the 2023 Act, local authorities were permitted to charge an application fee of up to a maximum of £100. However, since the

introduction of the pavement licences under the 2020 Act, the Authority has made no charge for pavement licence applications. This was considered to be in the interests of supporting the hospitality sector in recovery from the effects of the Covid-19 pandemic and from cost pressures relating to the cost-of-living crisis. The Director of Regeneration and Economic Development took a delegated decision in September 2023 that the application fee should continue to be £nil for the period up to the end of 30 September 2024, unless that amount was increased, following a review undertaken by the Director of Regeneration and Economic Development.

Following the introduction of the 2023 Act, the fee cap for a pavement licence application has been increased from £100 for all types of application to £500 for applications by persons who do not already hold a pavement licence and £350 for any other type of application, subject to each local authority deciding the level of fee up to the cap. This increase in fee cap is intended to allow local authorities to recover the costs of processing, monitoring, and enforcing licences.

Experience in the borough in the time since the introduction of the pavement licensing regime, has provided the Authority with an evidence base of the level of officer time required to administer the various aspects of the application process. These include, for example, reviewing the application; conducting the consultation and processing responses; carrying out any post-application checks; preparing and issuing licences; responding to any queries; and carrying out monitoring of licences as well as enforcement if required. The evidence base has been used to calculate a figure for costs incurred by the Authority, which has been used to set the proposed fees.

It is therefore proposed that the fees for pavement licence applications are those set out in paragraph 1.2 above.

The decision not to charge a fee was at a time when there was a pandemic and the period thereafter when the hospitality sector was recovering from the effects of the pandemic. That was some four years ago and whilst there has been a cost-of-living crisis, this has to be balanced against the need for the Authority to recover costs for officer time and use of Authority resources incurred whilst meeting its statutory duties.

1.5.4 Process for decision

Under the Officer Delegation Scheme, a General Delegation is given to all Directors relating to matters over which they have managerial or professional responsibilities in their service area.

GD6 states that a Director can : -

“take decisions on behalf of the Authority on all matters where they have managerial or professional responsibilities for their service areas. A summary of the scope of the Assistant Chief Executive/each Director of Service’s responsibility is set out at the beginning of each service area’s section in the scheme.”

An officer delegated decision by the Director of Regeneration and Economic Development is therefore sought to agree the recommendations set out in section 1.2 above.

1.6 Decision options:

The following decision options are available for consideration by the Director of Regeneration and Economic Development:

Option 1

To approve the recommendations as set out in paragraph 1.2 above.

Option 2

Not to approve the recommendations as set out in paragraph 1.2 above.

Option 1 is the recommended option.

1.7 Reasons for recommended option:

Option 1 is recommended for the following reasons:

Approving the recommendations in section 1.2 of the report will enable the Authority to continue to have in place appropriate arrangements for pavement licensing in accordance with current legislation.

1.8 Appendices:

Appendix 1 – Conditions to which Pavement Licences are subject



Appx1-Conditions.pdf

Appendix 2 – Notice of Application



Appx2-Notice.pdf

Appendix 3 – Equality Impact Assessment



Appx3-EqIA.pdf

1.9 Contact officers:

Paul Watson, Head of Highways and Transportation, 0345 2000 101
Andrew Flynn, Senior Manager – Integrated Transport, 0191 643 6083
Samantha Lacy, Network Business Manager (Capita), 0345 2000 101
Christie Hall, Streetworks Compliance Manager (Capita), 0191 643 6537
Amar Hassan, Principal Accountant, Investment (Capital) and Revenue,
0191 643 5747

1.10 Background information:

- (1) [Levelling-up and Regeneration Act 2023](#)
- (2) [Business and Planning Act 2020](#)
- (3) [The Business and Planning Act 2020 \(Pavement Licences\) \(Coronavirus\) \(Amendment\) Regulations 2023](#)
- (4) Government [guidance](#): Pavement licences
- (5) North Tyneside Council [website](#) – ‘Apply for a pavement licence’ – current conditions of licence, application form and notice for display

PART 2 – COMPLIANCE WITH PRINCIPLES OF DECISION MAKING

2.1 Finance and other resources

Financial implications are discussed in section 1.5.3 of the report. The increase in the national fee cap is intended to allow local authorities to recover the costs of processing, monitoring, and enforcing licences. The recommended fees for licences in North Tyneside reflect this consideration.

2.2 Legal

The legal implications are set out in the body of the report.

Section 15 of the Levelling-up and Regeneration Act 2023 makes it clear that functions relating to pavement licences are Council functions and are not the responsibility of Cabinet and the 2023 Act has amended Schedule 1 of the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 accordingly.

2.3 Consultation/community engagement

2.3.1 Internal consultation

Internal consultation has involved the Deputy Mayor and the Cabinet Member for Environment.

2.3.2 Community engagement

A consultation period applies to individual applications for pavement licences as described in section 1.5.2. The proposed levels of fees have been determined with regard to recovering the costs to the Authority of processing, monitoring, and enforcing licences, and hence engagement has not taken place on these.

2.4 Human rights

Any human rights implications must be balanced against the duty that the Authority has to provide a safe highway for people to use. It is not considered that the proposals will have a negative impact on individuals' human rights.

2.5 Equalities and diversity

An Equality Impact Assessment for the pavement licence process has been undertaken and is attached as Appendix 3 to this report. Actions are specified to reduce the potential negative impacts relating to physical accessibility where furniture and seating are placed on the footway, and to accessibility considerations associated with the application form.

2.6 Risk management

There are no risk management implications arising directly from this report. Applying appropriate conditions to pavement licences enables the Authority to minimise risks associated with placing seating and furniture on the footway.

2.7 Crime and disorder

Applying appropriate conditions to pavement licences enables the Authority to manage any crime and disorder implications associated with placing of seating and furniture on the footway.

2.8 Environment and sustainability

There are no environment and sustainability implications directly arising from this report. The Authority's conditions of licence include a requirement to maintain sufficient footway width to ensure safe passage for pedestrians, which helps to ensure that the proposal does not disadvantage people travelling sustainably by walking or wheeling.

PART 3 – SIGN OFF

- Chief Executive

- Director of Service

- Chief Finance Officer

- Monitoring Officer

- Interim Director of
Corporate Strategy and
Customer Service

