

North Tyneside Council

Report to Director of Regeneration and Economic Development

Date: 29 September 2023

Title: Pavement Licences

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:

Part 1 of the Business and Planning Act 2020 (“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 permitted businesses that sold and served food or drink supplied from their premises to place removable furniture on part of a relevant highway adjacent to the premises for use by their customers. This meant that premises such as cafés, public houses and restaurants operating in North Tyneside from that time became able to apply for such licences, and indeed many licences have been applied for and granted since then.

The Act as initially passed stated that such licences could be granted by the Authority for such period as is considered appropriate, or, if there was no limit on their duration, up to the end of 30 September 2021. However, the Secretary of State has on two occasions now extended the period of time over which such licences can have effect by introducing secondary legislation. The most recent Regulations made by the Secretary of State are the Business and Planning Act 2020 (Pavement Licences) (Coronavirus) (Amendment) Regulations 2023 which extended the maximum duration of a pavement

licence granted by the Authority if there is no limitation on its duration, up to the end of 30 September 2024.

It is therefore necessary for the Director of Regeneration and Economic Development to determine if the existing standard licence conditions previously approved and published by the Authority remain in place up to the end of 30 September 2024, if the form of the Notice of Application to be displayed at premises should remain in its current form, or be amended, and if the application fee should remain at £nil.

1.2 Recommendation(s):

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

1. that the pavement licence conditions previously agreed and published by the Authority and appended to this report at Appendix 1 continue to apply in relation to any pavement licences granted in North Tyneside up to the end of 30 September 2024;
2. that the Notice of Application to be displayed at the relevant premises by a person applying for a pavement licence will continue to be in the form set out in Appendix 2 of this report up to the end of September 2024; and
3. that the application fee for a pavement licence in North Tyneside should continue to be £nil unless that amount is increased following a review carried by the Director of Regeneration and Economic Development.

1.3 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.

1.4 Information:

1.4.1 Background

The Act introduced a simple and expedited licensing process for businesses such as bars, public houses, restaurants and cafés who wished to use the public highway adjacent to their premises as an outdoor seating area. A pavement licence would permit the licence-holder to place removable furniture on part of the highway.

The simplified application process was seen as an appropriate form of support for the hospitality sector in its recovery from the effects of the Covid-19 pandemic and to enable such businesses to operate in accordance with the “social distancing” rules that applied during the height of the pandemic.

The Act, amongst other things, sets out the pavement licence application process to be followed by applicants and local authorities and includes provisions about notification of applications and the information that must be included in an application submitted to a local authority. Insofar as the notice obligations are concerned, 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 current Notice of Application that the Authority requires applicants to display is attached to the report at Appendix 2.

The Act permits the Authority when granting a pavement licence to attach such conditions to the licence as it considers reasonable. The Authority may publish conditions subject to which it proposes to grant pavement licences. These are in effect the “standard conditions” that would apply to all pavement licences granted by the Authority. These are appended to the report at Appendix 1 and have been in place since July 2020 and are published on the Authority’s website alongside details of the application process.

When considering an application for a pavement licence, the Authority must take into account any representations made to it within 7 days 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 is not detrimentally affected if a licence is granted to operate a licensed area on the pavement. It 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 disabled people.

At the end of the 7-day consultation period the Authority must either grant the pavement licence to the applicant or reject the application.

It must also be recognised that the grant of a pavement licence will only permit the placing of furniture on the pavement. Other regulatory frameworks, such as the need for a premises licence permitting the sale of alcohol under the Licensing Act 2003 or the need for food business registration will still apply and need to be met and this is not obviated by the obtaining of a pavement licence.

1.4.2 Licence fee

Local authorities are permitted to charge an application fee of up to £100. Since the introduction of the pavement licences under the 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 recovering from the effects of the Covid-19 pandemic. Given that the hospitality sector in addition to having to recover from the Covid-19 pandemic is faced with cost pressures owing to the cost of living crisis, it is proposed that the application fee should continue to be £nil for the period up to the end of 30 September 2024, unless that amount is increased following a review carried by the Director of Regeneration and Economic Development.

1.4.3 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 endorse the recommendations set out in section 1.2 above.

1.5 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.

1.6 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 current arrangements that are in place in relation to pavement licensing to continue in place up until 30 September 2024. That will provide certainty for local businesses and continue to provide support for the business sector and boost the economy of the borough.

1.7 Appendices:

Appendix 1 – Conditions to which Pavement Licences are subject

Appendix 2 – Notice of Application

Appendix 3 – Equality Impact Assessment

1.8 Contact officers:

Paul Watson, Head of Highways and Transportation, 0345 2000 101

Andrew Flynn, Senior Manager – Integrated Transport, 0191 643 6083

Robbie Redpath, Streetworks Manager, Capita, 0191 643 6131

David Dunford, Senior Business Partner, Finance, 0191 643 7027

1.9 Background information:

(1) [Business and Planning Act 2020](#)

- (2) [The Business and Planning Act 2020 \(Pavement Licences\) \(Coronavirus\) \(Amendment\) Regulations 2023](#)
- (3) North Tyneside Council [website](#) – ‘Apply for a pavement licence’

PART 2 – COMPLIANCE WITH PRINCIPLES OF DECISION MAKING

2.1 Finance and other resources

There are no financial and resource implications directly arising from this report. Any expenditure which cannot be contained within existing budgets will be reported to Council / Cabinet, as appropriate for a decision before any expenditure is incurred or committed.

2.2 Legal

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

Section 8 of the Business and Planning Act 2020 makes it clear that the functions set out in sections 1 –7 of the Act (which concern pavement licensing) are functions which are not the responsibility of the Executive, but rather the responsibility of Council.

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 seven-day consultation period applies to individual applications for pavement licences.

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.