



# Doncaster Council

## Report

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Date: 17 September 2020

### To the Chair and Members of the Licensing Committee

### Temporary Pavement Licence Application Process and Fee (Business & Planning Act 2020)

#### EXECUTIVE SUMMARY

1. To request that the members of the Licensing Committee note that following the introduction of the Business & Planning Act 2020 ('the Act'), approval was sought and obtained to implement a temporary pavement licence application process and set a fee, by way of an 'urgent action in accordance with Council procedure rule 36'.
2. To request that members also note the changes introduced by the Act in relation to permitted off sales of alcohol from premises which are only licensed for on sales.

#### EXEMPT REPORT

3. There are no confidential issues.

#### RECOMMENDATIONS

4. It is recommended that the members of the Licensing Committee note that the approval by the Director of Economy & Environment, Chair of the Licensing Committee and Cabinet Member for Communities, Voluntary Sector and the Environment was received on 24 July 2020.
5. The fee has been set at £100.
6. The determination and granting of licences of this type has been delegated to the Assistant Director of Environment and Head of Service for Regulation and Enforcement.
7. It is recommended that members note that where a premises has the benefit of a premises licenced under the Licensing Act 2003 which permits alcohol to be sold for consumption on the premises shall be treated as also having permission to sell alcohol for consumption off the premises at a time when 'on sales' are permitted but no later than 11.00pm without the need for an

application to amend the current licence, until 30 September 2021.

## WHAT DOES THIS MEAN FOR THE CITIZENS OF DONCASTER?

8. The Business and Planning bill 2020 received royal assent on 22 July 2020. Now that the legislation has been passed, Doncaster Council are obligated to receive and consider applications made for this licence immediately.

## BACKGROUND

9. As a local authority, Doncaster Council has a responsibility to encourage a return to economic vitality following the Covid19 pandemic. One of the Government recommendations to achieve this task is through the licensing of the public highway to allow hospitality businesses to extend their capacity limits and to increase social distancing possibilities for patrons.
10. A temporary pavement licence has been created to allow this activity. The Council is able to charge a fee of up to £100 for a licence that will be valid until September 2021. It was proposed, and approved, to charge the maximum fee permitted and therefore this licence will cost £100 and grant permission for tables, chairs and related infrastructure to be placed on the public highway until 30 September 2021 subject to such conditions as may be imposed by statute, the Secretary of State or Doncaster Council.
11. The approved conditions are attached as Appendix A.
12. The Application process will consist of the completion of an application form and payment of the fee. The Application is then subject to statutory consultation which is achieved by the Applicant displaying a notice at the premises and the Council publishing the Application on its website. This needs to be in place for 7 days. The Council then has 7 days to consider any representations made to the Application. The Council must then determine whether or not to grant the licence and if granted any conditions to be imposed, taking into account the outcome of the consultation process and the national conditions from the Secretary of State.
13. It was proposed, and approved, that this process be delegated to the Assistant Director of Environment and Head of Service for Regulation and Enforcement.
14. Appendix B sets out the Government Guidance issued in respect of these new licences.
15. It should be noted that this is intended to cover all applications throughout the borough, excluding the area in the town centre covered by a Public Spaces Protection Order (PSPO) that prohibits being in possession of an open vessel of alcohol.
16. Applicants who want their patrons to be able to drink alcohol in the designated area will still be able to have tables and chairs on the highway but the application will need to be under the existing regime already in place as this type of licence is not impacted by a PSPO.
17. Provisions in the Act also temporarily modify the Licensing Act 2003 to provide an automatic extension to the terms of most premises licences

which only permit the sale of alcohol for consumption on the premises to allow the sale of alcohol for consumption off the premises. This will make it easier for licensed premises to sell alcohol to customers for consumption off the premises which will allow businesses to trade and maintain social distancing.

18. The new off-sales permission will permit off-sales to be made at a time when the licensed premises are open for the purposes of selling alcohol for consumption on the premises, subject to a cut off time of 11pm or the closure time of an existing outside area, whichever is earlier. Measures also temporarily suspend existing licence conditions in so far as they are inconsistent with the new off-sales permission.
19. Guidance for premises which were licensed for the sale of alcohol for consumption on the premises only, is attached as Appendix C.

## **OPTIONS CONSIDERED**

20. The decision notice contained two options.
21. Option 1. Implement a temporary pavement licence scheme under the business and planning act 2020 valid throughout the borough but excluding areas covered by a public spaces protection order with conflicting prohibitions.
22. Option 2. Do nothing.
23. Option 1 was recommended and approved. No decision was required for the entitlement to provide 'off sales' from licensed premises.

## **REASONS FOR RECOMMENDED OPTION**

24. The Business and Planning Act introduces a new Scheme to allow businesses to extend their trading area through the use of temporary pavement licences on the highway. Doncaster Council must ensure we have a process to deal with these applications as a failure to deal with any applications as required means the temporary pavement licence is granted as applied for.

## **IMPACT ON THE COUNCIL'S KEY OUTCOMES**

25.

	<b>Outcomes</b>	<b>Implications</b>
	<p><b>Doncaster Working:</b> Our vision is for more people to be able to pursue their ambitions through work that gives them and Doncaster a brighter and prosperous future;</p> <ul style="list-style-type: none"><li>• Better access to good fulfilling work</li><li>• Doncaster businesses are supported to flourish</li><li>• Inward Investment</li></ul>	<p>It is recognised that hospitality premises are, businesses, places of employment and potential assets to the community.</p> <p>The Council, via the Assistant Director of Environment and Head of Service for Regulation and Enforcement, will have regard to this priority when making licensing decisions.</p>

	<p><b>Doncaster Living:</b> Our vision is for Doncaster's people to live in a borough that is vibrant and full of opportunity, where people enjoy spending time;</p> <ul style="list-style-type: none"> <li>• The town centres are the beating heart of Doncaster</li> <li>• More people can live in a good quality, affordable home</li> <li>• Healthy and Vibrant Communities through Physical Activity and Sport</li> <li>• Everyone takes responsibility for keeping Doncaster Clean</li> <li>• Building on our cultural, artistic and sporting heritage</li> </ul>	<p>It is recognised that hospitality premises are, businesses, places of employment and potential assets to the community.</p> <p>The Council, via the Assistant Director of Environment and Head of Service for Regulation and Enforcement, will have regard to this priority when making licensing decisions.</p>
	<p><b>Doncaster Learning:</b> Our vision is for learning that prepares all children, young people and adults for a life that is fulfilling;</p> <ul style="list-style-type: none"> <li>• Every child has life-changing learning experiences within and beyond school</li> <li>• Many more great teachers work in Doncaster Schools that are good or better</li> <li>• Learning in Doncaster prepares young people for the world of work</li> </ul>	None
	<p><b>Doncaster Caring:</b> Our vision is for a borough that cares together for its most vulnerable residents;</p> <ul style="list-style-type: none"> <li>• Children have the best start in life</li> <li>• Vulnerable families and individuals have support from someone they trust</li> <li>• Older people can live well and independently in their own homes</li> </ul>	<p>It is recognised that hospitality premises are, businesses, places of employment and potential assets to the community.</p> <p>The Council, via the Assistant Director of Environment and Head of Service for Regulation and Enforcement, will have regard to this priority when making licensing decisions.</p>
	<p><b>Connected Council:</b></p> <ul style="list-style-type: none"> <li>• A modern, efficient and flexible workforce</li> <li>• Modern, accessible customer interactions</li> <li>• Operating within our resources and delivering value for money</li> <li>• A co-ordinated, whole person, whole life focus on the needs and aspirations of residents</li> <li>• Building community resilience and</li> </ul>	None

	<p>self-reliance by connecting community assets and strengths</p> <ul style="list-style-type: none"> <li>• Working with our partners and residents to provide effective leadership and governance</li> </ul>	
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## RISKS AND ASSUMPTIONS

26. The Business and Planning Act introduces a new Scheme to allow businesses to extend their trading area through the use of temporary pavement licences on the highway. Doncaster Council must ensure we have a process to deal with these applications as a failure to deal with any applications as required means the temporary pavement licence is granted as applied for.

## LEGAL IMPLICATIONS [Officer Initials HW Date 26/08/2020]

27. The Business and Planning Act 2020 (the Act) introduced a new scheme to allow businesses to extend their trading area through the use of temporary pavement licences on the highway. This is in addition to the existing right to apply for a similar licence under the Highway Act 1980. The Act, which was introduced at very short notice, required local authorities to ensure they had a process to deal with these licences as a failure to deal with any applications as required would mean the temporary pavement licence would be granted as applied for without the imposition of any conditions. Such conditions, whilst not required for the licence to operate, ensure appropriate control is placed on the operation of such licences. Initial approval for the process was dealt with utilising the emergency provisions set out in the Constitution at Rule 36 which requires that the Committee be advised of details of the process approved.
28. The Act also introduced the automatic legal right for premises which previously only had a licence for on sales would automatically be entitled to sell alcohol for consumption off the premises. This right is subject to certain conditions and exceptions as set out in the Act.

## FINANCIAL IMPLICATIONS [Officer Initials JB Date 20.08.2020]

29. It has been estimated that 80-100 licences will be issued under the new scheme. This would generate £8,000-£10,000 for the Council as well helping restart the local economy. The service needed to ensure systems and procedures were in place to collect the additional income and allocate it to the correct service budget. The fee charged will cover the cost of administering the scheme, any subsequent enforcement action and is based on government recommendations.
30. The Council's Financial Procedure Rules state that "Any new fees and charges proposed within the financial year or any changes to existing fees and charges will be approved by the CFO in consultation with the relevant Portfolio Holder, subject to key decision rules and reported to Cabinet in the quarterly monitoring report." The Council's Chief Financial Officer (CFO) was supportive of the introduction of the new fee and consulted with the relevant portfolio holder.

## HUMAN RESOURCES IMPLICATIONS [Officer Initials DK Date 17/08/2020]

31. There are no direct HR implications to this report.

#### **TECHNOLOGY IMPLICATIONS [Officer Initials AM Date 14/08/20 ]**

32. There are no technology implications in relation to this report.

#### **HEALTH IMPLICATIONS [Officer Initials CT Date 17.08.20]**

33. Public Health supports Option 1. However, as part of the approval process of the temporary pavement licenses the Director of Public Health requests that pedestrian access is not compromised by the increase in outdoor seating areas, particularly for people with limited mobility, wheelchair users and pushchairs.
34. The Director would also like to see in due course how the discontinuation of the temporary pavement licenses and permitted off-sales will be managed in time for their removal in September 2021 to ensure premises are acting within the law.

#### **EQUALITY IMPLICATIONS [Officer Initials DDS Date 12/08/2020]**

35. Decision makers must consider the Council's duties under the Public Sector Equality Duty at s149 of the Equality Act 2010. The duty requires the Council, when exercising its functions, to have 'due regard' to the need to eliminate discrimination, harassment and victimisation and other conduct prohibited under the act, and to advance equality of opportunity and foster good relations between those who share a 'protected characteristic' and those who do not share that protected characteristic. The approved conditions seek to meet this obligation. In addition, any activities arising from this report will need to be the subject of separate 'due regard' assessments.
36. Any businesses which apply for a temporary pavement licence will also need to have regard to their own duties under the Equality Act 2010, such as their duty under s.29 of the Act not to discriminate in providing their service.

#### **CONSULTATION**

37. The decision was approved by Peter Dale: Director of Economy & Environment, Cllr Ken Keegan: Chair of the Licensing Committee and Cllr Chris McGuinness: Cabinet Member for Communities, Voluntary Sector and the Environment.
38. The decision was copied to the Chief Executive, the Governance Services Team and is now being reported to the next ordinary meeting of the Licensing Committee.

#### **BACKGROUND PAPERS**

39. Appendix A - 'BPA Pavement Licence Conditions'  
Appendix B - Government Guidance for Pavement licences  
Appendix C – Government Guidance for the provision of off-sales.

#### **REPORT AUTHOR & CONTRIBUTORS**

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