



# Doncaster Council

## **DONCASTER METROPOLITAN BOROUGH COUNCIL**

### **URGENT ACTION IN ACCORDANCE WITH COUNCIL PROCEDURE RULE 36**

#### **Subject Matter**

Approval sought to align the delegations, conditions and processes of Temporary Pavement Licence Applications and applications made under the Highways Act 1980 including the setting of the same fee structure.

#### **Decision**

To approve the alignment of Temporary Pavement Licence Application under the Business and Planning Act 2020 Process and the Highways Act 1980 Alfresco licence application process for the Doncaster borough. Set the same fee and conditions including the delegation of determinations and granting of licences to the Assistant Director of Environment and Head of Service for Regulation and Enforcement.

#### **Reason for Urgency**

The Highways Act 1980 Alfresco scheme has been in place for some time and has some fifty licences issued within the Town centre. The licence conditions have not been reviewed for some time and are somewhat inconsistent with the new licences being issued under the Business and Planning Bill 2020. It is imperative that both these licence regimes align so there is consistency when conditioning licences and that fee structure and delegations align. The authority is obligated to consider applications made to both licence types immediately. The authority need to ensure that those who already have Highways Act licences are conditioned consistently and both regimes and the delegations aligned. As the COVID business restrictions are being eased across the country a number of licensed establishments are wishing to use outdoor space to expand their business offer. It is therefore imperative that this review is put in place as soon as possible and therefore it would be detrimental to business to wait to take this change through the typical governance process

## Background Information

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.

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 (the government are proposing to extend this to September 2022), and this was approved through a SO36 application in September. However there is already an existing regime within the Highways Act 1980 alfresco licences, these licences conditions have not been reviewed for some time and do not align with temporary licence measures put in place by the government. It is proposed that we align both schemes licence conditions so that all existing licences can be moved across to the new conditions. This will mean when the temporary scheme is phased out in September 2021 (which may be extended to September 2022), all licences will have the same conditions right across the borough instead of a two tier scheme that we have in place now. The only difference will be the consultation periods as these are set by the legislation.

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The proposed conditions are included in Appendix 1 for the 'Pavement Licence Doncaster Borough'. However, the Council is currently reviewing the operation of the scheme over the next five weeks which may necessitate some amendments to the conditions.

The Application process consists 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 under the Business and Planning Act or 28 days under the Highways Act 1980 scheme. The Council then has 7 or 28 days (depending under which scheme the application is made under) 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, the national conditions from the Secretary of State and the ongoing review of the scheme (or any other future revisions). It is proposed this process is delegated to the Assistant Director of Environment and Head of Service for Regulation and Enforcement.

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. 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

The proposed conditions for are included in appendix 2 Highways Act 1980 alfresco Pavement Licence

This regime will have to be used where a licence is required in PSPO area and will have the same conditions as the licence at appendix 1 but will have a different consultation period set by the legislation of 28 days with the Assistant Director of Environment and Head of Service for Regulation and Enforcement to make the decision

## **Legal Implications**

The Business and Planning Act 2020 introduced a new Scheme to allow businesses to extend their trading area through the use of temporary pavement licences on the highway. Doncaster Council has ensured it has a process to deal with these applications. However a similar licence can be applied for under the Highways Act 1980 and this is the only licence that will allow those in a PSPO area to utilise the outside space to consume alcohol. Without these two schemes being aligned the authority will have a two tiered approach to alfresco licencing and without the appropriate delegations in place could be open to legal challenge.

## **Financial Implications**

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 as helping restart the local economy. The service will need to ensure systems and procedures are in place to collect the additional income and allocate it to the correct service budget. It is envisaged that fee charged will cover the cost of administering the scheme, any subsequent enforcement action and is based on government recommendations.

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) is supportive of the introduction of the new fee and has consulted the relevant portfolio holder and an ODR to support the decision is in place

## **Equality Implications**

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 suggested 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.

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.

### **Other Implications (if any)**

Not applicable

### **Options considered and reasons for the decision**

Two options have been considered

1. Align both the conditions of the 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 with the Highways Act alfresco pavement licence scheme including appropriate delegations and fee structure This is the recommended option
2. Do nothing, this is not recommended.

### **Background Papers**

Appendix 1 - 'BPA Pavement Licence Conditions'  
Appendix 2 - Highways Act Alfresco Licence Conditions

Signed .....

**Director of Economy & Environment**

Date ...9<sup>th</sup> April 2021.....

I have been consulted in respect of the above decision.

Signed ..... K. Keegan (via email).....

**Chair of the Licensing Committee**

Date 17th March 2021

Signed ...

**Cabinet Member for Communities, Voluntary Sector and the Environment**

Date 12 April 2021

**Declaration of Interest YES/NO**

**If YES please give details below:**

This decision will be copied to the Chief Executive, the Governance Services Team and reported to the next ordinary meeting of the Licensing Committee.