

**Report of the Director of Resilient Communities to the
Licensing and Safety Committee
12 October 2022**

Update on the Business and Planning Act 2020

1.0 Summary of Report

- 1.1 On the 22 July 2020 the Business & Planning Act 2020 received Royal Assent and its provisions came into immediate effect. The Act brought into force a licensing regime for permitting businesses to use furniture, placed on the highway, to sell or serve food or drink and/or allow it to be used by people for consumption of food or drink supplied from, or in connection with, the use of the premises.
- 1.2 Walsall Council's Licensing Service has introduced an application process, set out in detail within this report, to manage pavement café licences, in response to the Act.

2.0 Background

- 2.1 The Business & Planning Act 2020 received Royal Assent on the 22 July 2020 and establishes an expedient process for processing and determining applications for Pavement Café licences. Businesses such as pubs, bars and restaurants have been severely adversely affected by Covid-19 and many have been closed for an extended period.
- 2.2 The act was put in place as a temporary measure to help the economy during the pandemic. The temporary provisions were supposed to be made permanent in September 2022. However, the government has now decided to extend the provisions of the act to September 2023.
- 2.3 Once the act has been made permanent, the government will also set statutory fees nationally for applications under the act. The current fee is set at £100 under the temporary provisions. Once the government has made this legislation permanent, a report with an update will be provided to the Licensing & Safety committee mid-2023.
- 2.4 Currently under the new Business & Planning Act 2020 we have two licences in place for tables and chairs. Under the Highways Act 1980, we currently have three licences in place.

3.0 Resource Considerations

3.1 **Financial:** The fee set by the government (£100) falls significantly short of covering the administrative and enforcement cost of licensing the function introduced. The Act makes clear that Licensing authorities are expected to rely on existing budgets in order to meet the requirements of the new legislation. As there is no appeal to the Magistrates Court for a refusal or revocation of this application, this increases the risk of the Licensing Authority's policy and procedures being judicially reviewed.

3.2 **Legal:** The Council can exercise its functions by way of committees or officers. When exercising delegated authority, in addition to any policies the Council may have, both committees and officers are bound by natural justice, human rights, the legal framework, and relevant and statutory guidance.

3.3 The Business & Planning Act 2020 does not provide a right of appeal to a public court in the event of a refusal or revocation of a licence. However the Guidance states:

'There is no statutory appeal process for these decisions, however, councils may wish to consider the scope for an internal review process, for example permitting appeals to their Licensing committee.'

4.0 Staffing issues:

None

5.0 Citizen Impact

None

6.0 Community Safety

6.1 The Conditions adopted as part of this licensing regime will assist in the protection of public safety.

6.2 Where conditions are not adhered to and public safety is compromised there will be a reasonable expectation of enforcement including the possibility of the revocation of the licence.

7.0 Environmental Impact

7.1 None

8.0 Performance and Risk Management Issues

- 8.1 Decisions by the committee must be compliant with all relevant legislation.
- 8.2 One of the overwhelming priorities of the Licensing Authority is to ensure public safety. It is important that the scheme of delegations enable appropriate decisions to be made by the right person or body at the right time.

9.0 Equality Implications

Nothing arising from this report.

10.0 Consultation

None required.

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