

Monday, 5 September 2022

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## LICENSING COMMITTEE

You are summoned to a meeting of the Licensing Committee which will be held in the Council Chamber, Woodgreen, Witney OX28 1NB on **Tuesday, 13 September 2022 at 2.00 pm.**



Giles Hughes  
Chief Executive

To: Members of the Licensing Committee

Councillors: Michael Brooker (Chair), David Jackson (Vice-Chair), Joy Aitman, Mike Cahill, Julian Cooper, Jane Doughty, Ted Fenton, Norman MacRae MBE, Lysette Nicholls, Mathew Parkinson and Dean Temple

Recording of Proceedings – The law allows the public proceedings of Council, Cabinet, and Committee Meetings to be recorded, which includes filming as well as audio-recording. Photography is also permitted. By participating in this meeting, you are consenting to be filmed.

As a matter of courtesy, if you intend to record any part of the proceedings please let the Democratic Services officers know prior to the start of the meeting.

## AGENDA

1. **Confirmation of appointment of the Chair of the Committee**

Purpose:

Confirmation of appointment of Chair for the Committee, civic year 2022/23.

Recommendations:

The Committee confirms appointments of Chair for the Committee, civic year 2022/23.

2. **Confirmation of appointment of Vice-Chair for the Committee**

Purpose:

Confirmation of appointment of Vice-Chair for the Committee, civic year 2022/23.

Recommendations:

The Committee confirms appointments of Vice-Chair for the Committee, civic year 2022/23.

3. **Minutes of Previous Meeting (Pages 5 - 6)**

To approve the minutes of the meeting held on 19 October 2021.

4. **Apologies for Absence**

To receive any apologies for absence.

5. **Declarations of Interest**

To receive any declarations from Members of the Committee on any items to be considered at the meeting.

6. **Participation of the Public**

To receive any submissions from members of the public, in accordance with the Council's Rules of Procedure.

7. **Appointment of Sub-Committees for 2022/23 (Pages 7 - 12)**

Purpose:

To invite the Licensing Committee to confirm the appointment of Sub-Committees for the 2022/23 municipal year.

Recommendations:

That the Licensing Committee resolves to:

- a) Appoint five members of the Committee to the Miscellaneous Licensing Sub-Committee in accordance with political proportionality and the wishes of political groups (2 Conservative, 2 Liberal Democrat, 1 Labour).
- b) Confirm that Licensing Panel membership will comprise the Chair or Vice Chair of the Licensing Committee and two other members of the Licensing Committee drawn on an alphabetical rota basis from the remaining members of the Licensing Committee (subject to their availability and completion of licensing training prior to participation in a Licensing Panel meeting), as detailed in paragraph 3.3.
- c) Note that the terms of reference of committees is on the work programme of the

Constitution Review Group.

8. **Business and Planning Act 2020 - Extension to pavement licensing regime (Pages 13 - 30)**

Purpose:

Draft policy document for approval following the extension of the current pavement licensing regime to 30th September 2023.

Recommendations:

- a) that the Licensing Committee considers the draft Pavement Licensing Policy at Annex A and
- b) that, subject to any further amendments, approves the draft Policy; and
- c) the Licensing Committee considers the fee charged for 2022/23.

(END)

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## WEST OXFORDSHIRE DISTRICT COUNCIL

### Minutes of the meeting of the **Licensing Committee**

Held in the Council Chambers, Woodgreen, Witney at 2.00 pm on **Tuesday, 19 October 2021**

#### PRESENT

Councillors: Norman MacRae MBE (Chairman), Harry Eaglestone, Ted Fenton and Lysette Nicholls.

Officers: Michelle Bignell (Service Leader (Licensing)) and Amy Bridgewater-Carnall (Democratic Services Manager).

#### **6 Minutes of Previous Meeting**

The minutes of the meeting held on 28 May 2021 were approved and signed by the Chairman as a correct record.

#### **7 Apologies for Absence and Temporary Appointments**

Apologies for absence were received from Councillors Mike Cahill, Owen Collins, Steve Good, Andy Graham, Dave Jackson and Geoff Saul.

#### **8 Declarations of Interest**

There were no declarations of interest noted.

#### **9 Chairman's Announcements**

The Chairman addressed the meeting and advised Members that this was the last meeting that the Service Leader (Licensing), Michelle Bignell, would be attending with West Oxfordshire District Council. Councillor MacRae thanked Michelle for her help and guidance over the past six years and wished her every success in her new role.

The Chairman then introduced Alison Gardner, who would be taking over part of the role previously held by Michelle.

#### **10 Gambling Act 2005 Statement of Principles (Policy) Review 2021**

The Committee received a report from the Service Leader (Licensing) which asked them to consider any issues raised in the consultation with stakeholders and the public on the Council's Draft Revised Gambling Act 2005 Licensing Policy Statement and consider amendments to the Policy prior to adoption.

The report reminded Members that the Council was required by the Gambling Act 2005 (the Act) to publish a Gambling Policy (Licensing Policy Statement) and review the policy every three years. The current statement had been approved by the Licensing Committee on 2 October 2018 and formally adopted on 31 January 2019. A copy of the current Council policy was attached as Annex B to the report.

The Licensing Committee considered the draft policy at its meeting in May 2021 and agreed that it should be put out to formal consultation for a period of 12 weeks. A copy of the revised Statement of Principles was attached at Annex A to the report and it was noted that no consultation responses had been received.

The report highlighted that S.166(1) of the Act stated that a Licensing Authority may resolve not to issue casino premises licences. Such a recommendation was made by the Licensing Committee at its meeting held on 15 October 2012 and subsequently approved by Council on 24 October 2012. Notwithstanding all the Casinos had been allocated by Central Government, S.166(3) of the Act stated that this resolution would expire after three years and

Licensing Committee

19/October2021

the Council would need to formally re-affirm at this time that a “no-casino resolution” was still in place.

The Service Leader (Licensing) introduced the report and explained that the only minor change had been to remove any reference to Publica, making the document more West Oxfordshire District Council focused. The officer also provided clarification on the statutory process required in relation to the ‘no casino’ resolution.


Having considered the report and having heard from the officers present, the Committee

**Recommended** that

- a) Council adopt the revised Statement of Principles; and
- b) Council continues to adopt a “no- casino resolution” for inclusion in the published Gambling Act 2005 Licensing Policy Statement.

The Meeting closed at 2.05pm

CHAIRMAN

 <p><b>WEST OXFORDSHIRE DISTRICT COUNCIL</b></p>	<p><b>WEST OXFORDSHIRE DISTRICT COUNCIL</b></p>
<p>Name and date of Committee</p>	<p><b>Licensing Committee – 13<sup>th</sup> September 2022</b></p>
<p>Report Number</p>	<p><b>AGENDA ITEM 7</b></p>
<p>Subject</p>	<p><b>Appointment of Sub-Committees for 2022/23</b></p>
<p>Wards affected</p>	<p>None</p>
<p>Accountable member</p>	<p>Chair of the Licensing Committee</p>
<p>Accountable officer</p>	<p>Andrew Brown, Democratic Services Business Manager Email: Andrew.Brown@publicagroup.uk</p>
<p>Summary/Purpose</p>	<p>To invite the Licensing Committee to confirm the appointment of Sub-Committees for the 2022/23 municipal year.</p>
<p>Annexes</p>	<p>None</p>
<p>Recommendation</p>	<p><i>That the Licensing Committee resolves to:</i></p> <p><i>a) Appoint five members of the Committee to the Miscellaneous Licensing Sub-Committee in accordance with political proportionality and the wishes of political groups (2 Conservative, 2 Liberal Democrat, 1 Labour).</i></p> <p><i>b) Confirm that Licensing Panel membership will comprise the Chair or Vice Chair of the Licensing Committee and two other members of the Licensing Committee drawn on an alphabetical rota basis from the remaining members of the Licensing Committee (subject to their availability and completion of licensing training prior to participation in a Licensing Panel meeting), as detailed in paragraph 3.3.</i></p> <p><i>c) Note that the terms of reference of committees is on the work programme of the Constitution Review Group.</i></p>
<p>Corporate priorities</p>	<p>A Vibrant District Economy: Securing future economic success through supporting existing local businesses and attracting new businesses to deliver the economic ambitions of the Local Industrial Strategy</p>
<p>Key Decision</p>	<p>NO</p>
<p>Exempt</p>	<p>NO</p>
<p>Consultees</p>	<p>Legal Services; Monitoring Officer; Licensing Team Leader</p>

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## BACKGROUND

- 1.1 The Council's Constitution provides that the Licensing Committee will have two Sub-Committees which have certain functions and responsibilities:
  - Miscellaneous Licensing Sub-Committee
  - Licensing Panel
- 1.2 The power to appoint members to Sub-Committees lies with the parent committee i.e. the Licensing Committee.

## 2. MISCELLANEOUS LICENSING SUB-COMMITTEE

- 2.1 This Sub-Committee is responsible for determining taxi, private hire and street trading applications in certain circumstances e.g. where the applicant has previous convictions. The provisions of the Local Government Act 1972 relating to Sub-Committees apply to the Miscellaneous Licensing Sub-Committee, meaning the membership must be appointed for a specified period of time (usually the duration of a municipal year), in accordance with political proportionality.
- 2.2 It is proposed that the Licensing Committee appoints five members of the committee (as in previous years) to the Miscellaneous Licensing Sub-Committee, in accordance with political proportionality, as set out in Table 1 below.

**Table 1: Political proportionality on a five member Sub-Committee**

Group	Conservative	Liberal Democrat	Labour	Green	Independent Group	Total
Real entitlement	2.04	1.53	0.92	0.2	0.2	4.89*
Rounded entitlement	2	2	1	0	0	5

*\*Non-grouped independent members impact overall proportionality but do not have an automatic entitlement to seats on committees and sub-committees.*

## 3. LICENSING PANEL

- 3.1 The Licensing Panel is responsible for determining Personal Licenses and Premises Licenses where representations are received, and for considering whether to grant Temporary Event Notices where objections are received from the Police or Environmental Health.

**3.2** The Licensing Panel is a Sub-Committee which is governed by the provisions of the Licensing Act 2003 rather than the Local Government Act 1972. Under the Licensing Act 2003, a Licensing Committee must establish one or more Sub-Committees comprising three members of the Licensing Committee. Licensing Panels are not subject to political proportionality and the membership does not have to be fixed for a specified period of time. It is a requirement of the Council's Constitution that the members participating in Licensing Panel meetings have completed licensing training.

**3.3** On 4 June 2014 the Licensing Committee resolved that the Licensing Panel will be appointed as follows:-

- The Chair or Vice-Chair of the Licensing Committee shall sit on and chair each meeting of the Panel.
- The other two members of each meeting of the Panel shall be drawn on an alphabetical rota basis from the remaining members of the Licensing Committee.
- In the event of a Member being unavailable or otherwise unable to sit for a particular hearing, the next Member on the rota be approached, with the former being eligible to sit at the next meeting instead.
- In the event of the Chair or Vice-Chair being unable to sit on a particular hearing the third member of the Panel shall be drawn from the membership of the Committee under the usual rota system and the Panel shall appoint a Chair for the hearing(s) from that membership as its first item of business.
- That no Member who has not attended appropriate training shall be permitted to sit at a meeting of the Licensing Panel.

**3.4** The Licensing Panel membership arrangements set out in paragraph 3.3 are long-standing but to ensure enhanced visibility and clarity about Licensing Panel membership, officers would recommend that these arrangements are included in the Council's Constitution. The Council has established a Constitution Working Group which is expected to consider the terms of reference of committees in late-September and report to Council on 19 October 2022. It is suggested that Licensing Panel membership is considered for inclusion in the Constitution as part of that work.

#### **4. CONCLUSIONS**

**4.1** The Licensing Committee is asked to confirm the appointment of members to the Miscellaneous Licensing Sub-Committee and the Licensing Panel.

#### **5. FINANCIAL IMPLICATIONS**

**5.1** There are no financial implications arising directly from the recommendations in this report.

## **6. LEGAL IMPLICATIONS**

- 6.1 The legal issues relating to licensing sub-committees are detailed in the body of the report, specifically paragraphs 2.1 and 3.2.

## **7. RISK ASSESSMENT**

- 7.1 Appointing sub-committees in accordance with the provisions of the law and the Constitution will help to ensure that licensing applications can be determined in a timely fashion and reduce the risk of challenge to decisions.

## **8. EQUALITIES IMPACT**

- 8.1 The Committee is advised to have due regard to the need to promote equality when appointing Sub-Committees with responsibility for determining licensing applications.

## **9. CLIMATE AND ECOLOGICAL EMERGENCIES IMPLICATIONS**

- 9.1 There are no climate or ecological implications arising directly from the recommendations in this report.

## **10. ALTERNATIVE OPTIONS**


- 10.1 If the Licensing Committee wishes to change the size of the Miscellaneous Licensing Sub-Committee or membership arrangements for the Licensing Panel it could pass an additional resolution requesting that officers bring a report to a future meeting with alternative proposals.

## **11. BACKGROUND PAPERS**

- 11.1 None

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# Agenda Item 8

 <p>WEST OXFORDSHIRE DISTRICT COUNCIL</p>	
Council Name	WEST OXFORDSHIRE DISTRICT COUNCIL
Name and date of Committee	LICENSING COMMITTEE - 13 SEPTEMBER 2022.
Report Number	AGENDA ITEM No 8
Subject	BUSINESS AND PLANNING ACT 2020 – EXTENSION TO PAVEMENT LICENSING REGIME
Wards affected	All
Accountable member	Cllr Lidia Arciszewska – Cabinet Member for Environment Email: <a href="mailto:Lidia.Arciszewska@westoxon.gov.uk">Lidia.Arciszewska@westoxon.gov.uk</a>
Accountable officer	Alison Gardner – Licensing Team Leader Email: <a href="mailto:alison.gardner@publicagroup.uk">alison.gardner@publicagroup.uk</a>
Summary	Draft policy document for approval following the extension of the current pavement licensing regime to 30th September 2023.
Annexes	<b>Annex A</b> – Copy of draft Pavement Licensing Policy
Recommendations	a) <i>that the Licensing Committee considers the draft Pavement Licensing Policy at Annex A and</i> b) <i>that, subject to any further amendments, approves the draft Policy; and</i> c) <i>the Licensing Committee considers the fee charged for 2022/23.</i>
Corporate priorities	ECONOMY Develop a vibrant economy that is resilient and future proofed. COMMUNITY Improve community wellbeing, supporting and celebrating our distinctiveness.
Key Decision	No
Exempt	No
Consultees/ Consultation	

## **I. BACKGROUND**

- I.1.** The Business and Planning Act 2020 (“the Act”) was introduced in 2020 to support various business sectors including hospitality. This Act included numerous temporary relaxations to existing legislations including the introduction of the Pavement Licensing regime which permitted businesses to apply to the Local Authority for a licence to use outside space to extend the trading area available for consumption of food and drink during the pandemic.
- I.2.** These powers were further extended until 30th September 2022.
- I.3.** The Pavement Licensing regime has now been given an interim extension until 30<sup>th</sup> September 2023 under the Business and Planning Act 2020 (Pavement Licence) (Coronavirus) (Amendment) Regulations 2022 pending a permanent change in the future.
- I.4.** West Oxfordshire District Council has a total of 17 licences across the District.

## **2. MAIN POINTS**

### **2.1. Draft Policy Document**

There have been no major changes to the draft policy at Annex A. The only changes made are:

- Updated dates to reflect the extension of the Act
- Inclusion of paragraph at section 2.6 regarding previous permissions.
- Change of wording at section 3.4 to read more clearly.
- Removal of paragraph at section 3.6 which indicated that objections will not be considered if no concerns raised during term of previous licence as all objections must be considered in accordance with the Act and to ensure fairness across applications.
- Updating of job title and wording in delegations table at section 3.6.

### **2.2. Fee**

In 2021/22, the Council determined to charge an application fee of £100 which is the maximum fee permitted under the Act.

Licensing fees should be charged on a cost recovery basis and although a cost recovery exercise has not been carried out, the cost of processing a licence would be more than £100.

### **2.3. Existing licence holders**

As there is no renewal application permitted under the Act, it is intended to make the application process as easy as possible for those licence holders who wish to apply for a ‘like-for-like’ licence. The licence holder will therefore not be required to submit plans and photographs as part of their application unless they wish to change the layout or numbers of tables and chairs. A copy of the public liability insurance will be required to ensure that a current policy is in place.

A fee will be charged where applicable.

### **3. FINANCIAL IMPLICATIONS**

- 3.1. The licensing service should set fees on a cost recovery basis. The Council will not be reimbursed for any costs if no fee is set. Therefore if the Committee determines to not charge a fee then this work will need to be subsidised by the Council.

### **4. LEGAL IMPLICATIONS**

- 4.1. The legal implications are contained within the body of this report. The Licensing Committee holds the delegated powers for the amendment of the Policy and fee.

### **5. EQUALITIES IMPACT**

- 5.1. Not directly applicable to this decision.

### **6. CLIMATE CHANGE IMPLICATIONS**

- 6.1. There are no direct climate change implications arising directly from this report.

### **7. ALTERNATIVE OPTIONS**

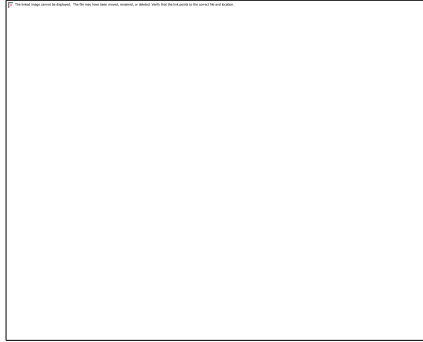
- 7.1. There are no alternative options.

### **8. BACKGROUND PAPERS**

- 8.1. Ministry of Housing, Communities & Local Government (MHCLG) Guidance on Pavement Licences 26 July 2022
- 8.2. Business and Planning Act 2020 (Pavement Licence) (Coronavirus) (Amendment) Regulations 2022

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# **West Oxfordshire District Council**

## **Pavement Licensing Policy**

**Revised September 2021**

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## **I. INTRODUCTION**

The Business and Planning Act 2020 (“the Act”) was passed to promote economic recovery and growth in response to the economic impacts of the global Covid-19 pandemic. The Act included urgent provisions designed to make it easier for premises in England serving food and drink such as bars, restaurants and pubs to seat and serve customers outdoors through temporary changes to planning procedures and alcohol licensing.

Sections 1 to 10 of the Act create a temporary regime for the issuing of “pavement licences” by appropriate local authorities. West Oxfordshire District Council (“the Council”) is the appropriate local authority for issuing pavement licences in the administrative area covered by the Council.

The process introduced a streamlined and cheaper route for businesses such as cafes, restaurants and bars to secure a licence to place furniture on the highway. The aim of the legislation is to support businesses to operate safely while social distancing measures remain in place and to provide much needed income over the summer months and protect as many hospitality jobs as possible.

The temporary licensing regime was in place until 30 September 2021. The provisions were then extended to 30 September 2022 when they are due to expire in accordance with section 10 of the Act.

## **2. SCOPE**

### **2.1. Definition of pavement licence**

A pavement licence is a licence granted by the local authority, or deemed to have been granted, which allows the licence-holder to place removable furniture over certain highways adjacent to the premises in relation to which the application was made, for certain purposes.

### **2.2. Eligible Businesses**

A business which uses (or proposes to use) premises for the sale of food or drink for consumption (on or off the premises) can apply for a licence. Businesses that are eligible include: public houses, cafes, bars, restaurants, snack bars, coffee shops, and ice cream parlours.

A licence permits the business 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.

### **2.3. Eligible Locations**

Licences can only be granted in respect of highways listed in section 115A(1) Highways Act 1980.

Generally, these are footpaths restricted to pedestrians or are roads and places to which vehicular access is restricted or prohibited. Highways maintained by Network Rail or over Crown land are exempt (so a licence cannot be granted).

### **2.4. Type of furniture permitted**

The furniture which may be used is:

- counters or stalls for selling or serving food or drink;
- tables, counters or shelves on which food or drink can be placed;
- chairs, benches or other forms of seating; and
- umbrellas, barriers, heaters and other articles used in connection with the outdoor consumption of food or drink.

This furniture is required to be removable, which in principle means it is not a permanent fixed structure, and is able to be moved easily, and stored away at the end of the evening.

The Council would also expect the type of furniture to be 'in keeping' with the local area.

## **2.5. Planning Permission**

If a pavement licence is granted, or deemed to be granted, the applicant will also benefit from deemed planning permission to use the land for anything done pursuant to the licence while the licence is valid and remains in force.

## **2.6. Existing tables/chairs**

The new pavement licence regime runs alongside the provisions in Part 7A of the Highways Act 1980, which remain in place.

Any existing permissions issued under Part 7A of the Highways Act 1980 remain valid.

## **3. APPLICATION AND DETERMINATION OF PAVEMENT LICENCES**

### **3.1. Submission of the Application**

An application for a Pavement Licence must be made to the Council on the appropriate form, and accompanied by:

- A plan showing the location of the premises marked by a red line, so the application site can be clearly identified
- A plan clearly showing the proposed area covered by the licence in relation to the highway, if not to scale, with measurements clearly shown. The plan must show the positions and number of the proposed tables and chairs, together with any other items of furniture to be placed on the highway. The plan shall include clear measurements of, for example, pathway width/length, building width and any other fixed item in the proposed area.
- Photos or brochures showing the proposed type of furniture and information on potential siting of it within the area applied.

The applicant must also have public liability insurance that covers the activity for third party and public liability risks, to a minimum value of £5 million before the licence can be utilised.

If a Traffic Regulation Order is required, the applicant must ensure that this permission is in place prior to applying for a Pavement Licence.

An application will not be considered complete (valid) until the application form and all required documents have all been received. The public consultation period will not commence until the day after a complete application has been made.

All expired licences will be treated as new applications. The applicant must readvertise the application for a period of 7 days. If the application is for the same layout only a copy of the public liability insurance will be required. If there is a change to the original layout, all documents will be required (e.g. plan, photographs of furniture etc.). A fee will be due in both cases.

### **3.2. Fees**

The fee for applying for a licence under the new process is set locally, but capped at £100. The Council has determined that the fee for applications will be £100.

### 3.3. Consultation

Applications are consulted upon for 7 days, starting with the day on which a valid application was received by the Council.

The Council will publish details of the application on its website at <https://publicaccess.westoxon.gov.uk/online-applications/>

The Council is required by law to consult with the Highway Authority. In addition, to ensure that there are no unacceptable detrimental effects arising from the application proposals the Council will consult with:

- West Oxfordshire District Council Planning teams
- West Oxfordshire District Council Food, Health and Safety team
- West Oxfordshire District Council Operations (Environmental Health) team
- Thames Valley Police
- Ward Members
- Town/Parish Councils

Members of the public and others listed above can contact the Council to make representations.

The Council must take into account representations received during the public consultation period and consider these when determining the application.

### 3.4. Site Notice

An applicant for a pavement licence must, on the day the application is made, fix a Notice of the application to the premises so that it is readily visible to, and can be read easily by, members of the public who are not on the premises. The Notice must be constructed and secured so that it remains in place until the end of the public consultation period. Evidence of the Site Notice requirement having been complied with must be supplied to the Council.

The Site Notice must:

- state that the application has been made and the date on which it was made;
- state the statutory provisions under which the application is made;
- state the address of the premises and the name of the business;
- describe the proposed use of the furniture;
- indicate that representations relating to the application may be made to the Council during the public consultation period and when that period comes to an end;
- state the Council's website where the application and any accompanying material can be viewed during the consultation period;
- state the address to which representations should be sent during the consultation period; and
- the end date of the consultation (7 days starting the day after the application is submitted to the Council).

A template Site Notice is shown as [Appendix I](#).

### 3.5. Site Assessment

The following matters will be used by the Council and consultees in considering the suitability of the proposal:

- public health and safety – for example, ensuring that uses conform with latest guidance on social distancing and any reasonable crowd management measures needed as a result of a licence being granted and businesses reopening;
- public amenity – will the proposed use create nuisance to neighbouring occupiers by generating anti-social behaviour and litter? and

- accessibility – taking a proportionate approach to considering the nature of the site in relation to which the application for a licence is made, its surroundings and its users, taking account of:
  - any other temporary measures in place that may be relevant to the proposal, for example, the reallocation of road space. This could include pedestrianised streets and any subsequent reallocation of this space to vehicles;
  - whether there are other permanent street furniture or structures in place on the footway that already reduce access;
  - the impact on any neighbouring premises
  - the recommended minimum footway widths and distances required for access by mobility impaired and visually impaired people as set out in Section 3.1 of [Inclusive Mobility](#), and
  - other users of the space, for example if there are high levels of pedestrian or cycle movements.

Applicants are strongly encouraged to talk to neighbouring businesses and occupiers prior to applying to the Council, and so take any issues around noise, and nuisance into consideration as part of the proposal. Discussions with neighbours should consider any plans neighbouring businesses have also to place tables and chairs on the highway and plans for customers to queue outside.

### 3.6. Determination

Once the application is submitted the Council has 14 days from the day after the application is made (excluding public holidays) to consult upon and determine the application. This consists of 7 days for public consultation, and then 7 days to consider and determine the application after the consultation.

If the Council determines the application before the end of the determination period it can:

- grant the licence in respect of any or all of the purposes specified in the application,
- grant the licence for some or all of the part of the highway specified in the application, and impose conditions, or
- refuse the application.

If the Council does not determine the application within the 14 day period, the application will be deemed to have been granted.

If an applicant is re-applying for a pavement licence and objections are received against a ‘like-for-like’ application, if there were no concerns raised during the period of time that the previous licence was in place the application is likely to be granted. The reason for this is that there is a revocation process if required.

The following are authorised to grant or refuse applications, and to revoke a Licence which has been granted:

TABLE OF DELEGATIONS	
Decision	Authorised decision maker
Granting an application where no objections have been received during the consultation period	Business Manager, Environmental and Regulatory Services or Licensing Service Leader
Granting or refusing an application where objections have been received during the consultation period	Business Manager, Environmental and Regulatory Services or Licensing Service Leader, following consultation with the Chairman of the Miscellaneous Licensing Sub-Committee

Revoking a Licence	Business Manager, Environmental and Regulatory Services or Licensing Service Leader, following consultation with the Chairman of the Miscellaneous Licensing Sub-Committee
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### 3.7. Calculation of Days

In deciding the public consultation period or the determination period, as referenced above, no account will be taken of a bank holiday, nor of Christmas Day or Good Friday. In all other instances the period shall be calendar days.

### 3.8. Approval of Applications

The Council may approve applications meeting the criteria contained within these guidelines.

On approving the application, the Council will issue a Pavement Licence to which conditions will be attached. The licence will also contain specific terms such as days and hours when tables and chairs are permitted and appearance and location of the furniture corresponding to the application.

A copy of the Council's standard conditions, which will be attached to all Pavement Licences are shown at [Appendix 2](#). Additional conditions may be attached if the Council considers it appropriate in the circumstances of any particular case.

The Council generally will only permit Pavement Licences between 08:00 and 22:00 hours.

Applications outside these hours will be assessed in terms of the criteria detailed above regardless of whether objections have been made or not. The Council however retains the right to specify permitted hours of trading that are less than those specified above in appropriate circumstances.

### 3.9. Licence Duration

If the Council determines an application before the end of the determination period (which is 7 days, beginning with the first day after the public consultation period, excluding public holidays) the Council can specify the duration of the licence, subject to a minimum duration of three months.

The expectation from the Government is that Councils will grant licences for 12 months or more unless there are good reasons for granting a licence for a shorter period such as plans for future changes in use of road space. As such, the Council will normally grant applications until 30 September 2022.

If a licence is 'deemed' granted because the Council does not make a decision on an application before the end of the determination period, then the licence will be valid for a year.

A licence granted or deemed to be granted will not be valid beyond 30 September 2022.

### 3.10. Refusal of Applications

If the site is deemed unsuitable for a Pavement Licence, or if relevant representations are made which cannot be mitigated by conditions then the application may be refused.

There is no statutory appeal process against a decision to refuse an application.

A business may apply again after refusal but will have to make a new application and address the concerns raised in the original application.

## 4. CONDITIONS

The Council's standard conditions can be found at [Appendix 2](#). In some cases, extra measures may be required. This will be determined when assessing any application, on a case by case

basis, and the Council will confirm the reasons why any additional conditions have been imposed.

The Act contains two national conditions that all granted and deemed granted licences must adhere to if the Council fails to publish their own conditions, or the published conditions fail to make provision for observing the national conditions. The two conditions are:

- a no-obstruction condition
- a smoke free seating condition

The Council's published conditions make provision for these conditions, but for the sake of transparency, the national conditions are detailed in Appendix 3 to this document.

The Act also allows for the Secretary of State to produce, via Regulations, conditions for pavement licences, and to stipulate whether these conditions have effect as well as, or instead of, the conditions placed on a licence by the Council. If such conditions are created, this guidance will be amended to reflect them, and all licence holders will be notified of any changes this may create.

Where a Council sets a local condition that covers the same matter as set out in national conditions, then the locally set condition takes precedence over the national condition where there is reasonable justification to do so.

## 5. ENFORCEMENT

The Council aims to work closely with other enforcement authorities to enforce the provisions of all appropriate legislation. It remains the case that an obstruction of the Highway is an offence under The Highways Act 1980 and will be dealt with by the Highways Authority or the Police.

Obtaining a licence does not confer the holder immunity in regard to other legislation that may apply, e.g. Public Liability, Health & Safety at Work, Food Hygiene and Safety, Alcohol and Entertainment Licensing and social distancing controls. An applicant must ensure such permissions are in place prior to applying.

If a condition imposed on a licence either by the Council or via a National Condition is breached the Council will be able to issue a Notice requiring the breach to be remedied and the Council can take action to cover any costs.

The Council may revoke a licence in the following circumstances:

1. For breach of condition, (whether or not a Remediation Notice has been issued) or
2. Where:
  - There are risks to public health or safety – for example by encouraging users to breach government guidance on social distancing by placing tables and chairs too close together;
  - the highway is being obstructed (other than by anything permitted by the licence);
  - there is anti-social behaviour or public nuisance – for example, the use is increasing the amount of noise generated late at night and litter is not being cleaned up;
  - it comes to light that the applicant provided false or misleading statements in their application – for example they are operating a stall selling hot food and had applied for tables and chairs on which drinks could be consumed; or



- the applicant did not comply with the requirement to affix the Notice to notify the public for the relevant period.
3. The Council may also revoke the licence where all or any part of the area of the relevant highway to which the licence relates has become unsuitable for any purpose for which the licence was granted or deemed to be granted. For example, the licensed area (or road adjacent) is no longer to be pedestrianised. The Council will give reasons where these powers are used.

## **6. REVIEW PROCEDURES**

This Policy covers the Temporary Permission for Pavement Licences under the Business and Planning Act which is scheduled to expire on 30 September 2022

This Policy will be reviewed from time to time should changes occur in relevant legislation, the nature of Pavement Licences generally, relevant social distancing measures or as a result of local considerations within the West Oxfordshire District.

**BUSINESS AND PLANNING ACT 2020**

**NOTICE OF APPLICATION FOR GRANT OF A PAVEMENT LICENCE**

I / We .....(1)

Do hereby give notice that on ..... (2)

I / we have applied to West Oxfordshire District Council for a pavement licence at:

.....  
..... (3)

known as..... (4)

The application is for:

.....  
..... (5)

Any person wishing to make representations to this application may do so by writing to [ers@westoxon.gov.uk](mailto:ers@westoxon.gov.uk) by:

..... (6)

The application and information submitted with it can be viewed at:

Signed .....

Date ..... (7)

## Guidance notes on completing this notice of application.

Complete the notice by putting the following information in the numbered spaces:

- (1) Name of the applicant
- (2) Date the application is made (submitted)
- (3) Postal address of the premises
- (4) Name the premises is known by
- (5) Brief description of application (e.g. outdoor seating to the front of the premises for serving of food and drink]).
- (6) Last date for representations being the date 7 days after the date the application is submitted to the local authority (excluding public holidays)
- (7) The date the notice was placed (must be the same date as (2) above)

On the same day that the application is made, a completed copy of this notice must be fixed to the premises so that it is readily visible to, and can be read easily by, members of the public who are not on the premises, and secure that the notice remains in place until the end of the public consultation period.

**Failure to comply this requirement may lead to the revocation of any licence granted or deemed granted.**

## Standard Pavement Licence Conditions

Please note that these conditions are not an exhaustive list. Each application will be considered on its own merits and individual, specific conditions may be attached where deemed appropriate.

Where a licence is deemed granted, the applicant is deemed to be a 'licence holder' and is required to comply with all of the below conditions. In such circumstances, references to 'licensed area' should be understood to mean the area proposed for licensing within the application.

1. The licence holder must ensure that no activity undertaken by them by the placing of furniture on the highway will:
  - (a) prevent traffic, other than vehicular traffic, from:
    - (i) entering the relevant highway at a place where such traffic could otherwise enter it (ignoring any pedestrian planning order or traffic order made in relation to the highway),
    - (ii) passing along the relevant highway, or
    - (iii) having normal access to premises adjoining the relevant highway,
  - (b) prevent any use of vehicles which is permitted by a pedestrian planning order or which is not prohibited by a traffic order,
  - (c) prevent statutory undertakers having access to any apparatus of theirs under, in, on or over the highway, or
  - (d) prevent the operator of an electronic communications code network having access to any electronic communications apparatus kept installed for the purposes of that network under, in, on or over the highway.
2. The licence holder must ensure clear routes of access are maintained, taking into account the needs of disabled people, and the recommended minimum footway widths and distances required for access by mobility impaired and visually impaired people as set out in the Department for Transport's [Inclusive Mobility](#) document.
3. Where the furniture to be put on the relevant highway consists of seating for use by persons for the purpose of consuming food or drink, the licence holder must make reasonable provision for seating where smoking is not permitted.
4. Permission to operate a pavement café does not imply an exclusive right to the area of public highway. The licence holder must be aware that West Oxfordshire District Council and others (e.g. police, highways authority, statutory undertakers) will need access at various times (including emergencies) for maintenance, installation, special events, improvements etc or any other reasonable cause. This may mean that the pavement café will need to cease operating and/or be removed for a period of time. On these occasions there would be no compensation for loss of business.

5. Tables and chairs must not be placed in position outside of the permitted times of the pavement licence. All tables and chairs and other furniture must be stored securely inside a premises away from the highway outside of these times.
6. The licence holder must ensure that furniture is positioned in such a way so as to ensure compliance with the relevant Government guidance on social distancing that is in place at any particular time and that staff can service the space in a manner that does not compromise their health and safety.
7. Unless another more restrictive condition has been attached to the licence in response to particular concerns raised during the public consultation period, the licence holder must not place any furniture on the highway in pursuance of this licence before 08:00hrs on any day and must remove all furniture placed on the highway in pursuance of this licence when the premises closes or by 22:00hrs on any day, whichever is the earliest.
8. The licence holder must at all times hold a current certificate of insurance that covers the activity for third party and public liability risks, to a minimum value of £5 million.
9. The area of the highway covered by the licence must be kept clean and tidy at all times. This will include washing down the area, and removing any refuse and litter on the highway in the vicinity of the removable furniture.
10. The licence holder shall not use or allow to be used any music playing, music reproduction or sound amplification apparatus or any musical instruments, radio, or television receiving sets in the area of the highway covered by the licence.
11. The licence holder is not to make or cause to be made any claim against the West Oxfordshire District or Oxfordshire County Council in the event of any property of the licence holder becoming lost or damaged in any way from whatever cause.
12. An unimpeded pedestrian route must be maintained at all times for people wishing to use the footway as per the National Licence Conditions (see Appendix 3).
13. The licensee should ensure that the area operates in a safe and orderly manner, thereby ensuring that any safety risk or nuisance to customers, other users of the public highway or any adjacent land or premises, is minimised.
14. During the hours of darkness suitable and sufficient lighting must be provided to ensure safe use of the area. Any proposals to provide additional lighting to the licensed areas must be agreed with the Highway Authority.
15. The licence holder is not permitted to make any fixtures, or excavations of any kind, to the surface of the highway without prior written approval. Any costs incurred as a result of damage to the highway, due to the positioning of tables and chairs etc. will be recovered in full from the licence holder by West Oxfordshire District Council or the Highway Authority.
16. The premises must ensure that if alcohol is sold from the business that all necessary permissions under the Licensing Act 2003 are in place.
17. The licence must be displayed on the premises with a plan of the agreed layout of the pavement café.
18. West Oxfordshire District Council reserves the right to revoke this licence at any time if any of the above conditions are not fulfilled and maintained.
19. The licence holder must ensure that the area covered by the licence is monitored regularly by staff to ensure that the conditions above are being adhered to.

### National Conditions

[All section references are to the Business and Planning Act 2020]

#### No-obstruction condition

Section 5(5)

A “no-obstruction condition” is a condition that anything done by the licence holder pursuant to the licence, or any activity of other persons which is enabled by the licence, must not have an effect specified in section 3(6):

Section 3(6)

The effects referred to in subsection (5) are-

- a) preventing traffic, other than vehicular traffic, from—
  - i. entering the relevant highway at a place where such traffic could otherwise enter it (ignoring any pedestrian planning order or traffic order made in relation to the highway),
  - ii. passing along the relevant highway, or
  - iii. having normal access to premises adjoining the relevant highway,
- b) preventing any use of vehicles which is permitted by a pedestrian planning order or which is not prohibited by a traffic order,
- c) preventing statutory undertakers having access to any apparatus of theirs under, in, on or over the highway, or
- d) preventing the operator of an electronic communications code network having access to any electronic communications apparatus kept installed for the purposes of that network under, in, on or over the highway.

#### Smoke-free seating condition:

Section 5(6)

A “smoke-free seating condition” is a condition that, where the furniture to be put on the relevant highway consists of seating for use by persons for the purpose of consuming food or drink, the licence-holder must make reasonable provision for seating where smoking is not permitted.