

**REPORT OF THE CHIEF EXECUTIVE
NEW PAVEMENT LICENCES – BUSINESS AND PLANNING ACT 2020**

Report written by Assistant Director (Governance) & Monitoring Officer

PART 1 – KEY INFORMATION

PURPOSE OF THE REPORT

To consider the new legal framework for Pavement Licences under the Business and Planning Act 2020, to designate that the Licensing Team will be responsible for these functions and authorises delegated powers to the Acting Corporate Director Operations and Delivery as set out within the report.

EXECUTIVE SUMMARY

The new Business and Planning Act 2020 (“the Act”) received royal assent on 22nd July 2020, proposing significant changes designed to help licensed premises to survive and then bounce-back from the pandemic lockdown. The provisions include a new “Pavement Licence” regime, to be administered by local authorities, 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.

The Act includes temporary measures to support businesses selling food and drink through economic recovery as lockdown restrictions are lifted but social distancing guidelines remain in place. Cafes, pubs and restaurants are permitted to open, but the current social distancing guidelines will have considerable impact on the capacity to accommodate customers.

The measures in the Act are designed to support businesses selling food and drink such as cafes, pubs and restaurants by introducing a temporary fast-track process for these businesses to obtain permission, in the form of a “Pavement Licence”, from the District Council for the placement of furniture such as tables and chairs on the pavement outside their premises. This will enable them to maximise their capacity whilst adhering to social distancing guidelines.

The Act includes temporary measures to place a cap on the application fee for businesses, enforcement and revocation powers so councils can protect public safety and amenity, and introduces a new 14-day determination period, ensuring that businesses can obtain licences in a timely and cost effective manner aiding to their financial recovery.

In exercising its functions the local authority must have regard to guidance issued by the Secretary of State under the Act (attached as Appendix A).

RECOMMENDATION(S)

That the Chief Executive, in accordance with his powers and following consultation with the Chairman of the Licensing and Registration Committee:

- (a) Determines that the service responsible for the operation of the new Pavement Licence function be the Licensing Team;
- (b) Authorises the Acting Corporate Director Operations and Delivery be granted delegated powers to receive, consider and grant Pavement Licences in accordance with any Local Conditions agreed in consultation with the Chairman of the Licensing and Registration Committee;
- (c) Requests that those Local Conditions are published on the Council's website upon being agreed;
- (d) Authorises the Acting Corporate Director Operations and Delivery be granted delegated powers to determine the length of the Pavement Licences in consultation with the Chairman of the Licensing and Registration Committee;
- (e) Requests that any local guidance being considered in the determination of the length of the Pavement Licences is published on the Council's website upon being agreed;
- (f) Determines the application fee be set at £100 following consultation with the Portfolio Holder for Corporate Finance and Governance; and
- (g) Any review and appeal is determined by the Acting Corporate Director Operations and Delivery in consultation with the Chairman of the Licensing and Registration Committee, Chief Executive and Monitoring Officer until further delegations are granted.

PART 2 – IMPLICATIONS OF THE DECISION

DELIVERING PRIORITIES

At the heart of the Council's Corporate Plan 2020-24 is Tending4Growth with a key theme being a priority for Growing and Inclusive Economy and supporting existing businesses.

The Government's policy aims are set out in the Explanatory Notes to the Bill were that *"Covid-19 has affected businesses across the economy. Many businesses have had to cease trading for several months, and others have had to significantly modify their operations. As the economy starts to re-open, the Government wants to do all it can to support recovery, help businesses adjust to new ways of working and create new jobs. This Act introduces a number of urgent measures to help businesses succeed in these new and challenging conditions over the coming months, and to remove short term obstacles that could get in their way. Almost all measures are temporary, with some limited exceptions."*

FINANCE, OTHER RESOURCES AND RISK

Finance and other resources

The Deputy Leader of the Council and Corporate Finance & Governance Portfolio Holder has agreed to set the application fee to the maximum fee of £100 per application.

The Licensing Team will be responsible for the overall determination of the Pavement Licences however, it is considered appropriate to review administrative resources in other services to assist the Licensing Team with these new statutory functions.

Risk

Applications are subject to 7 days of consultation and then a decision has to be taken within a further 7 days: otherwise the licence is deemed to have been granted for a year. Only Christmas Day, Good Friday and bank holidays don't count so, generally, the whole process takes two weeks maximum. Thus councils need to be ready to start receiving licence applications as soon as the Act is passed, and therefore among other things they need to have sorted out what local conditions apply. In the absence of local conditions, there is only one national condition about maintaining sufficient access for disabled people and others along pavements.

LEGAL

New legal framework is set out in Sections 1-10 of the new Business and Planning Act 2020 (the Act) and makes district councils responsible for issuing pavement licences. All districts will need to be aware of the need for early action by them, as this part of the Act comes into force immediately.

The Act amends Schedule 1 to the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (S.I. 2000/2853) (functions which are not to be the responsibility of an authority's executive) to insert a new item 73 in paragraph B, confirming that functions relating to pavement licences as set out in Sections 1 to 7 of the Business and Planning Act 2020 are not to be the responsibility of the Executive.

Responsibility of Functions and Scheme of Delegated Powers as set out in Part 3 of the Council's Constitution states that functions relating to licensing & registration in paragraph B of the 2000 Regulations fall within the terms of reference of the Licensing and Registration Committee.

The Council should put in place a Scheme of Delegation for operational purposes and it is recommended that all functions are delegated to officers in the interests of speed, and in particular in terms of handling decisions on applications as there will be only 7 days to take a decision following the consultation period, as well as any internal review panel for "appeals". Without delegations and all the other elements in place, it would increase the risk of deemed licences as a result of non-determination. Deemed licences have effect for 12 months, so the Council will have lost control of whether or not a licence should be issued if it does not have the necessary arrangements in place in good time.

The Chief Executive is authorised under Part 3 (3.6 – para 6) of the Constitution to deal with any matter on exceptional grounds of urgency, following consultation with the Leader of the Council or Deputy, the Chairman and Vice-Chairman of the appropriate Committee in respect of non-executive matters. The Act received royal assent on 22nd July and comes into effect immediately, therefore it is not possible for a Scheme of Delegation to be approved by Council or the Licensing and Registration Committee.

OTHER IMPLICATIONS

Consideration has been given to the implications of the proposed decision in respect of the following and any significant issues are set out below.

Crime and Disorder / Equality and Diversity / Health Inequalities / Area or Ward affected / Consultation/Public Engagement.

Authorities must have regard to the needs of disabled people when considering whether to grant a pavement licence in accordance with Section 3(7) of the 2020 Act.

PART 3 – SUPPORTING INFORMATION

CURRENT POSITION

Details of provisions

Further details of the Act's provisions are set out below. In addition to the Act, guidance has been issued by MHCLG and is attached as Appendix A.

The types of business which may apply to the local authority for a "pavement licence" are those whose premises are used, or proposed to be used, as:

- (a) as a public house, wine bar or other drinking establishment; or
- (b) other use for the sale of food or drink for consumption on or off the premises.

A pavement licence permits furniture to be temporarily placed on the highway. "Furniture" includes stalls for selling or serving food or drink, tables and chairs and articles such as umbrellas, barriers and heaters.

An application must be made by electronic means and be accompanied by a fee which will be set by the local authority, subject to a cap of £100.

In addition to a Notice on the premises itself, the local authority must publish the application and invite representations.

The local authority must consult the highways authority where the local authority is not itself the highways authority for the land. It must also consult such other persons as it considers appropriate.

Before making a determination in respect of the application, the local authority must take into account any representations made to it during the public consultation period. After the end of the public consultation period the local authority may grant or reject the application and, in granting the application, they may make their own determination as to any or all of the purposes in relation to which the application is made and how much of the space requested, the licence will cover.

A local authority may only grant a Pavement Licence if it considers, after taking into account any conditions subject to which it proposes to grant the licence, nothing done by the licence-holder pursuant to the licence would have an effect of:

- (a) preventing traffic, other than vehicular traffic, from—
 - (h) 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.

If the local authority does not make a determination within the 7-day determination period which follows the 7-day consultation period, the licence is deemed to have been granted in the form in which the application was made.

A local authority can decide, when it is granting a licence, how long the licence should last for, or it can leave it open ended, in which case it will expire at the end of 30 September 2021 (unless this backstop date is extended by the Secretary of State). However, the licence must have a minimum duration of 3 months.

The local authority can add conditions to the licence and can publish conditions which it proposes to add to pavement licences.

The Secretary of State may also specify conditions via Regulations laid before Parliament. Where a pavement licence is granted or deemed to have been granted, it is deemed to include any conditions set down in Regulations.

Section 5 of the Act specifies:

- A “no-obstruction condition” (subsection 5) being 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); and
- 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.

If a condition of the licence has been breached, the local authority may revoke the licence or may require steps to be taken to remedy the breach.

In addition, further grounds for revocation of the licence including where some or all of the part of the relevant highway to which the licence relates has become unsuitable for any purpose in relation to which the licence was granted or deemed to be granted, the furniture

is giving rise to risks to public health or safety or anti-social behaviour or public nuisance is being caused or risks being caused.

The licence can also be revoked where the person did not put up a notice to publicise the application as required, or anything in the application was false or misleading.

Where a licence is granted, or deemed to have been granted, any planning permission for anything done under the licence is deemed to have been given.

Where a pavement licence is in effect, a street trading licence is not needed for any activity authorised by the pavement licence.

A person may still apply for permission to put furniture on the highway under Part 7A of the Highways Act 1980, but the local authority may not require them to apply under that Act, instead of under these provisions.

Local authorities retain their power under section 149 of the Highways Act to remove furniture placed on the highway should it constitute a nuisance or danger under that section.

Where a person has applied for a licence under the Highways Act 1980 or the London Local Authorities Act 1990 or another local Act and has paid a fee and then, before a decision is made on that first application, the person applies for a pavement licence, the local authority cannot charge a fee in respect of the application for a pavement licence, and the first application is treated as being withdrawn.

Matters for the Council to Consider:

The Council must decide whether it wishes to grant local conditions and process it will apply for the determination of the applications, including any key parameters, including the fee to be charged and for what period the licences will be issued for.

The legislation runs to 30 September 2021 but could be extended by secondary legislation. District Councils have the ability to grant licences for whatever period they wish, subject to a minimum of 3 months, although the draft guidance suggests 12 months should be the normal period.

A 12 month licence issued in the next few weeks would extend for part but not all of summer 2021, and Councils might decide to set the length of licences so that there has to be a fresh application for the spring/summer of 2021. This would allow the experience of the operation of the licences this summer to be reviewed and allow the Council time to make any change to its local conditions for 2021.

There is a legal requirement, as drafted, that an application must:

- be sent to the authority using electronic communications in such manner as the authority may specify: and
- be accompanied by such fee not exceeding £100 as the local authority may require.

Clearly a payment will not “accompany” an email/web application if a cheque is sent in the post; and applications cannot be made by post or in person, consequently the electronic processes for businesses to apply and pay their application fee on line are being produced.

BACKGROUND PAPERS FOR THE DECISION

The Business and Planning Act 2020

APPENDICES

Appendix A - Guidance issued by MHCLG
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