

# LICENSING AND REGISTRATION COMMITTEE

3 NOVEMBER 2022

## REPORT OF THE DEPUTY CHIEF EXECUTIVE

### A.3 **EXTENSION OF PROVISIONS UNDER THE BUSINESS AND PLANNING ACT 2020 - PAVEMENT LICENSING FRAMEWORK**

(Report prepared by Michael Cook & Keith Simmons)

#### PART 1 – KEY INFORMATION

##### **PURPOSE OF THE REPORT**

This item is to enable the Committee to receive an update on the extension of provisions under the Business and Planning Act 2020 in relation to pavement licences.

##### **EXECUTIVE SUMMARY**

The substantive legislative position on pavement licences is that they are granted primarily under Part 7A of the Highways Act 1980. This is understandably because the authority to approve obstacles on highway land rests with the Highway Authority. For the District of Tendring that Highway Authority is Essex County Council. The power under the 1980 Act; including enforcement still rests with Essex County Council.

In response to the implications for businesses arising from the coronavirus pandemic, the Business and Planning Act 2020 introduced temporary provision for a fast-track process to allow businesses selling food or drink to obtain authorisation from the local authority for the placement of furniture such as tables and chairs on highway adjacent to their premises (“a pavement licence”). Those temporary provisions were due to expire at the end of September 2022.

The 2020 Act’s provisions are designated as ‘non-executive’ and this Council delegated the responsibility to this Committee. The arrangements under the 2020 Act were set out in the decision of 24 July 2020 ([Decision - Operation of the new Pavement Licence Function - Business and Planning Act 2020 \(tendringdc.gov.uk\)](https://www.tendringdc.gov.uk/decision-operation-of-the-new-pavement-licence-function-business-and-planning-act-2020)).

Since the decision referred to, the temporary provisions under the 2020 Act have been extended by twelve months to 30 September 2023 by virtue of the Business and Planning Act 2020 (Pavement Licences) (Coronavirus) (Amendment) Regulations 2022,. The arrangements in the decision referred to will continue during this extended period.

##### **RECOMMENDATION(S)**

**It is recommended that the Committee receives the report and advises officers on any matters of importance to the implementation of the measures set out.**

#### PART 2 – IMPLICATIONS OF THE DECISION

##### **DELIVERING PRIORITIES**

At the heart of the Council’s Corporate Plan 2020-24 is Tendring4Growth. A key theme of

the Corporate Plan supporting a Growing and Inclusive Economy. Within this theme there is the intention to support existing businesses.

The intention of the provisions of the 2020 Act was to support recovery (from the restrictions due to the Coronavirus Pandemic) for those hospitality businesses who had to cease trading for several months, and others who had to significantly modify their operations. The pavement licensing measures were considered urgent to help businesses succeed and to remove short-term obstacles that could get in their way. These measures are temporary.

## **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.

For the Council the overall administration of the 2020 Act's pavement licences has been accommodated within the Licensing Team of Democratic Services & Elections. Should the temporary functions become more permanent there will be a need to review how the demands of this work fits within the overall licensing resource.

### **Risk**

A significant risk to the Council as Licensing Authority is that it misapplies its powers. The decision of 24 July 2020 referred to above seeks to ensure that the Council applies its powers correctly. It is important to note that if a business places tables and chairs on the highway without a pavement licence from this Council under the 2020 Act there is no enforcement power available to this Council. Enforcement of obstructions on the highway is a matter for the Highway Authority/Police.

## **LEGAL**

The Business and Planning Act 2020 places the responsibility for considering applications for pavement licenses (within the provisions of that Act) on local authorities acting as licensing authorities.

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.

Under the constitution, this function is delegated to officers in view of the statutory turnaround time for licences applications which is 14 days from application to determination. The role of officers though is to apply the Council's policies, procedures and practices and the responsibility for those rests with this 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 people with disabilities when considering whether to grant a pavement licence in accordance with Section 3(7) of the 2020 Act.

## **PART 3 – SUPPORTING INFORMATION**

### **CURRENT POSITION**

In response to the struggles being faced by businesses throughout the country in 2020, the Government introduced a temporary 'pavement licence' through the Business and Planning Act 2020. These supplemented the continuing provisions under Part 7A of the Highways Act 1980 whereby (for the District of Tendring) Essex County Council may authorise pavement licences.

In guidance accompanying the 2020 Act temporary provisions, the Government identified that the fee for the Highways Act process varies markedly between local authorities and there is a minimum 28-calendar day consultation period. The 2020 Act temporary provisions were intended to introduce a more streamlined and cheaper route for businesses such as cafes, restaurants and bars to secure a licence to place furniture on the highway. It was hoped that this would provide much needed income for businesses and protect as many hospitality jobs as possible.

The 2020 Act pavement licences allow the licence-holder to place removable furniture over certain highways adjacent to their premises for purposes set out further below. The simpler application process (compared with the process under the Highways Act 1980) allows businesses to secure these licences quickly and, where they are deemed to have been granted, allow these licences to remain in place for up to a year.

Where a pavement licence is granted, clear access routes on the highway need to be maintained, taking into account the needs of all users, including disabled people. It is for this reason that a licence can only be granted to premises that can accommodate a minimum of 2 clear metres between the trading area and the curb/street furniture.

The fee for applying for a licence under the Business and Planning Act 2020 is capped at £100 and the public consultation period is 7 working days (excluding public holidays), starting the day after the application is sent electronically to the authority. The Council then has a further 7 days to determine the application.

Pavement Licences are available to businesses that use (or propose to use) the premises for the sale of food or drink for consumption (on or off the premises). Businesses that are eligible include: public houses, cafes, bars, restaurants, snack bars, coffee shops, and ice cream parlours including where such uses form an ancillary aspect of another use, for example supermarkets, or entertainment venues which sell food and drink.

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.

The Business and Planning Act was initially brought in as an emergency piece of legislation in July 2020 in response to the coronavirus pandemic. The provisions for pavement licences were due to expire at the end of September 2022. By virtue of the Business and Planning Act 2020 (Pavement Licences) (Coronavirus) (Amendment) Regulations 2022, the temporary provisions for pavement licences have been extended to

30th September 2023.

Any pavement licences that had an expiry date of 30 September 2022, or earlier, still expired on that date and a renewal application was needed before its expiration to continue the licence to provide tables and chairs outside.

There are provisions in the current version of the Levelling Up and Regeneration Bill that would, if enacted, further amend the provisions for pavement licences under the 2020 Act. This report does not deal with those provisions.

In addition to the relaxation to the pavement licence provisions provided by the Business and Planning Act, a relaxation was also given back in 2020 to licensed premises (for on-sales of alcohol) with regards to off-sales. The Alcohol Licensing (Coronavirus) (Regulatory Easements) (Amendment) Regulations 2022 extended that relaxation to 30 September 2023.

<b>BACKGROUND PAPERS FOR THE DECISION</b>
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None
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<b>APPENDICES</b>
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None
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