

Report to Council

Subject: Pavement Licences under the Business and Planning Act 2020

Date: 16 September 2020

Author: Service Manager – Legal Services

Purpose

To formally delegate functions under Part 1 of the Business and Planning Act 2020 to the Environment and Licensing Committee.

Recommendation

THAT: functions under Part 1 of the Business and Planning Act 2020 be delegated to the Environment and Licensing Committee.

1 Background

- 1.1 The Business and Planning Act 2020 (“the Act”) received Royal Assent and came in to effect on 22 July 2020. The Act allows operators of businesses selling food and drink to apply to their local authority for a pavement licence, which gives authorisation to put certain removable furniture such as tables and chairs on the highway adjacent to their premises to sell food and drink from and/or for their customers to use. Under the Act, the pavement licensing regime is operated by the appropriate local authority, which is the district council in whose area relevant premises are situated. There are a number of statutory obligations placed on the Council in respect of the new pavement licensing regime.
- 1.2 Prior to the introduction of the Act operators had to apply for two different permissions to enable tables and chairs to be placed on the pavement for customers. Firstly planning permission was required, which allows a change of use of the land from a highway use to restaurant/tables and chairs use, then a permit from the Highway Authority issued under the Highway Act 1980 was required. This regime was considered to be time consuming and not supporting swift re-opening of our high streets, and so, although it will remain in place, Part 1 of the Business and Planning Act

2020 was introduced. The new licence process is intended to help businesses to trade at a larger capacity whilst adhering to social distancing guidelines by providing the opportunity to quickly extend their premises onto the highway where it is safe to do so. The Act sets out a swift timetable for determination of applications which makes the process much shorter and licences can be granted up to September 2021.

- 1.3 The Act received Royal Assent on 22 July 2020 and came in to effect on the same day. Late amendments to Bill by the House of Lords and approved on 21st July 2020 changed the functions under Part 1 of the Act to non-executive functions as a result it would fall within the remit of full Council. As Elected Members are aware, decisions in respect of licensing have been delegated to the Environment and Licensing Committee, however as new functions the power to deal with pavement licences is not included in the current delegation to the Committee and therefore remains with full Council. Given the speed within which the Act has been passed and the need to have procedures and delegations in place to ensure applications for the new pavement licences could be dealt with immediately, the Chief Executive in consultation with the Mayor exercised urgent powers to delegate authority to the Director of Community Health and Wellbeing to exercise functions under the Act and agreed that applications for pavement licences will not attract an application fee.

2 Proposal

- 2.1 It is unclear how long the legislation will remain in force, and at present pavement licences can only be issued up to September 2021. Whilst the arrangements may not be long term, it is proposed that the function of pavement licences be formally delegated to the Environment and Licensing Committee by Council. The decision of the Chief Executive to delegate to the Director ensured that the Council was able to fulfil its statutory requirements in the immediacy, but this delegation from full Council will enable Committee to have overarching responsibility and oversight of the function going forward. It will also ensure that if there are any amendments to the Business and Planning Act 2020 which require further decisions, these can be made by the Committee rather than needing to come into Council.

3 Alternative Options

- 3.1 Council could choose not to grant a formal delegation of the pavement licensing function to Environment and Licensing Committee. However the proposal is consistent with other delegations to this Committee. As a licensing function, this sits well with other functions which the Environment and Licensing Committee is responsible for.

4 Financial Implications

4.1 There are no financial implications directly arising from this report.

5 Legal Implications

5.1 A last minute amendment to the Business and Planning Bill confirmed pavement licences is a non-executive function meaning that it is a function which sits with full Council. There are no existing delegations in the Council's constitution to the Environment and Licensing Committee in relation to this new type of licence.

6 Equalities Implications

6.1 There are no equalities implications directly arising from this report.

7 Carbon Reduction/Environmental Sustainability Implications

7.1 There are no carbon reduction/environmental sustainability implications directly arising from this report.

8 Appendices

8.1 None.

9 Background Papers

9.1 None.

Statutory Officer approval

**Approved by the Chief Financial Officer
Date: 1 September 2020**

Drafted by the Deputy Monitoring Officer