

Report to the Chief Executive

Subject: Pavement Licenses under the Business and Planning Act 2020

Date: 23rd July 2020

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Wards Effected

Borough-wide

Purpose

The purpose of this report is to:

1. To update the Chief Executive on the statutory obligations of local authorities under the Business and Planning Act 2020 in relation to the issuing of pavement licences.
2. To seek approval of appropriate delegations and fees in relation to pavement licensing.

Recommendation(s)

THAT the Chief Executive in consultation with the Mayor:

- 1) **Notes the contents of this report and the statutory obligations of Local Authorities under the Business and Planning Act 2020.**
- 2) **Delegates authority to the Director of Community Health and Wellbeing to exercise all functions under Part 1 of the Business and Planning Act 2020.**
- 3) **Agrees that pavement licence applications will not attract an application fee.**
- 4) **Submits a report for consideration at the next meeting of Council proposing the delegation of pavement licensing functions to the Environment and Licensing Committee.**

1 Background

- 1.1 From 4 July 2020 restaurants, cafes, bars and public houses have been removed from the closure restrictions found in the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020. However, although they are able to open, those businesses are required to operate safely, and within the necessary constraints of the Government's social distancing guidance. The restrictions in respect of indoor gatherings and social distancing (2m or 1m plus) reduces the capacity of these businesses to accommodate customers inside their premises. One way to try and resolve this is, where possible, to have seating available outside the premises.
- 1.2 Under the existing regime it is necessary to apply for two different permissions to enable tables and chairs to be placed on the pavement for customers. Firstly planning permission is 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's Authority issued under the Highway Act 1980 is required. This regime is considered to be time consuming, and so, although this regime will remain in place, Part 1 of the Business and Planning Act 2020 ("the Act") introduces a new 'pavement licence' to be issued by local authorities, to enable businesses to offer outdoor seating arrangements to customers more expediently. Under the Act, local authorities (including district authorities) have the discretion to charge a fee of up to £100 for each pavement licence application. The new licence and application process are 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 Business and Planning Act 2020 received Royal Assent and came in to effect on 22 July 2020.
- 1.4 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.
- 1.5 Under the Act, the pavement licensing regime will be 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.

- 1.6 Applications for a pavement licence are to be made electronically. There are no prescribed forms and it is up to the local authority to decide whether or not to specify the format of the applications. The Act does require certain prescribed information to be given by the applicant and the local authority has discretion to require additional information or material as part of the application. On application the applicant is required to display a notice at the premises notifying the public of the application. The notice is in a form approved by the local authority.
- 1.7 A pavement licence may be granted subject to conditions that the local authority considers reasonable, together with any mandatory conditions contained within the Act. The mandatory conditions include a condition that any street furniture must not obstruct the highway and that there must be a smoke free area as part of the outdoor area. Future mandatory conditions may be introduced by regulation.
- 1.8 The day after receipt of a pavement licence application the local authority must publish the application together with information and/or material submitted with it, and allow 7 days (including weekends but excluding public holidays) for a public consultation. In addition to the public the local authority can consult with other public authorities such as the County Council as Highways Authority, the police, fire authority if necessary, planning and environmental health. Following the consultation period the local authority has 7 days (including weekends but excluding public holidays) to determine the application.
- 1.9 Failure to determine the application within the total of 14 days results in a deemed grant of the pavement licence for a period of 1 year subject to a compulsory expiry of 30 September 2021 if the licence is still in force at that time. Any licences deemed granted will be subject to the mandatory conditions and any conditions published by the authority at the date of the application. If no conditions are published any licences deemed granted will only be subject to the mandatory conditions.
- 1.10 The authority may specify the period of the licence provided it is for a minimum of three months and does not extend beyond 30 September 2021.
- 1.11 The grant of a pavement licence permits the placing of furniture on the highway only. Other regulatory frameworks still apply such as the need for alcohol licenses and the need to comply with registration requirements for food businesses. The grant of a pavement licence amounts to deemed planning permission to use the land for anything done pursuant to the licence while the licence is valid.

- 1.12 After a pavement licence has been granted, or deemed to be granted, should a licence holder breach any of the licence conditions, the authority may revoke the licence or serve a notice requiring the licence holder to take steps to remedy the breach. Where a notice is not complied with, the authority can take such steps as are required by the notice and recover the costs of doing so from the licence holder or revoke the licence.
- 1.13 The Act also amends and modifies the Licensing Act 2003 in relation to the off sale of alcohol by licensed premises. The amendments allow any premises with a current licence, permitting the consumption of alcohol on the premises, to sell alcohol for consumption off the premise. This allows for bars, pubs and restaurants to sell alcohol to be taken off site and consumed elsewhere. Off sales can be made from the time that the premises first open that day for the purposes of selling alcohol for consumption on the premises until 11.00pm.
- 1.14 This extension to premises licences does not apply to premises which have been refused permission for an off-sales licence or have has an off-sales element of their licence revoked in the last three years.
- 1.15 The Act sets out an expedited off-sales review process which enables responsible authorities under the Licensing Act to apply for a review of an off-sales licence if they believe one or more of the Act's objectives are being contravened.

2 Proposal

- 2.1 It is proposed that the contents of the report and the new statutory obligations of local authorities are noted.
- 2.2 It is proposed that in order to ensure appropriate operational measures can be put in place swiftly to manage the new statutory regime, authority is delegated to the Director of Community Health and Wellbeing to exercise all functions under Part 1 of the Business and Planning Act 2020. Officers have been tracking the development of the Act through parliament and, with colleagues across other local authorities, have drafted appropriate online application forms, considered relevant conditions to accompany any mandatory conditions, and are working with colleagues in Communications and IT to ensure appropriate publicising and advertising of applications can be made. Last minute amendments to the Business and Planning Bill mean that some adjustments are required to the conditions and application form but they are close to completion. The delegation to Director level will enable the Director to approve all final documents and processes, including the online application form and any necessary conditions,

determine licence applications and approve any enforcement action should this be necessary. The Director will also be able to further delegate decisions to officer level to ensure that applications can be processed within statutory timescales.

2.3 It is proposed that no fee is charged in respect of applications for pavement licences. Discussions have been had across authorities as to whether a fee should be levied. The Act permits a fee of up to £100, however, government are encouraging authorities to support local communities and economies by introducing this regime, and most surrounding authorities are offering the service free of charge. The County Council, who can still administer licences under the Highways Act have also temporarily waived their fees to encourage businesses to apply.

2.4 It is proposed that a report is taken to the next meeting of Council to formally delegate functions under Part 1 of the Act to the Environment and Licensing Committee. The amendments made to the Business and Planning Bill by the House of Lords and approved on 21st July 2020 changed the functions under Part 1 of the Act to a non-executive function. Decisions in respect of licensing would usually be delegated to the Environment and Licensing Committee and then any further delegations to officer level would come from that Committee. It has not been possible to take this approach given the speed within which the Act has been passed. The Council are required to determine applications for pavement licences under the Act, as such, the proposal above is to delegate functions to the Director for Community Health and Wellbeing so processes and decisions can be taken swiftly. It is unclear how long the legislation will remain in force, and at present licences can only be issued up to September 2021. In order to enable any major changes to be considered by Members, it is proposed that going forward, the function of pavement licences be given to the Environment and Licensing Committee by Council. This will enable the Director to ensure that the Council fulfil statutory requirements in the immediacy, but enable Committee to have overarching control of the function going forward.

3 Alternative Options

3.1 The receipt of and determination of applications for pavement licences will be a statutory requirement under the Business and Planning Act 2020, as such the Council are required to ensure the application process is available and licences are issued where appropriate.

- 3.2 An alternative option could be not to delegate authority to the Director of Community Health and Wellbeing to exercise all functions under Part 1 of the Business and Planning Act 2020 in relation to pavement licences. This would mean that exercising these functions would remain the responsibility of full Council as this function is a new non-executive function. Given the speed within which the Business and Planning Bill has progressed through parliament and its immediate effect, the Council needs to ensure that decisions can be taken swiftly. There has not been time to convene an emergency meeting of Council to enable them to delegate the functions to the Environment and Licensing Committee or alternatively to officer level. The Council needs to be able to start processing applications as soon as possible and ensure that appropriate conditions are in place. By delegating the function to Director level, the Council can establish appropriate operational measures and begin determining applications quickly without overburdening Members.
- 3.3 An alternative option would be to levy a fee for applications, this is generally not the approach that has been taken by other local authorities as the aim of the process is to boost local economies and encourage businesses to take up the option of trading outside premises if it is safe to do so.
- 3.4 An alternative option would be not to report to full Council seeking formal delegation of the pavement licensing function to Environment and Licensing Committee. The recommendations above will enable the functions of the Act to be carried out at Director level, however, moving forward, there may be changes made to the legislation. A delegation to Committee level will ensure members are involved in the progress of the powers under the Act and as it is essentially a licensing function, this sits well with other functions which the Environment and Licensing Committee are responsible for.

4 Financial Implications

- 4.1 The resource implications for processing the applications are unclear and will depend on the numbers of applicants coming forward. There are no proposals to take on additional resource at this time and any costs associated with the processing of applications will be met from existing budgets.

5 Legal Implications

- 5.1 A last minute amendment to the Business and Planning Bill made pavement licences 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. As this was a last minute amendment to the Bill, and applications can be made as soon as the Act received Royal Assent it is not possible to call a full Council meeting. Where a non-executive decision is required urgently, it can be made by the Chief Executive in consultation with the Mayor using the urgency provisions within the Council's constitution. The report to Full Council which will follow, will enable the functions to be delegated to the Environment and Licensing Committee so Member involvement in relation to the function will be ongoing.

- 5.2 Where personal data is taken from the applicant the Council needs to ensure that the data is taken in accordance with the General Data Protection Regulation 2016 and the Data protection Act 2018. Applicants will need to be advised that their data will be held for the purposes of processing applications and issuing licences. The privacy notices for Licensing will be updated to reflect the capture of data.

6 Equalities Implications

- 6.1 The Act requires the local authority to consider the needs of those within the protected characteristic of disability, and the recommended distances required for access by disabled people as set out in guidance issued by the Secretary of State when determining whether furniture put on the highway constitutes an obstruction. Current guidance found in section 3.1 of Inclusive Mobility sets out a range of recommended widths which would be required, depending on the needs of particular pavement users, but makes it clear that in most circumstances 1500mm clear space should be regarded as the minimum acceptable distance between the obstacle and the edge of the footway. The licence conditions will impose a requirement on the licence holder to take this into consideration.
- 6.2 Equalities implications have been considered as part of the application and consultation process. Applications for a licence must be made electronically and applications will be advertised on the Council's website and at the premises. There is an opportunity for the public to make representations on the applications, in multiple ways to enable maximum opportunity to participate in consultation.

7 Carbon Reduction/Environmental Sustainability Implications

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

8 Appendices

8.1 None

9 Background Papers

9.1 Business and Planning Bill as introduced to the House of Lords on 30.06.2020: <https://publications.parliament.uk/pa/bills/lbill/58-01/119/5801119.pdf>

9.2 Government Guidance on working safely during coronavirus (COVID-19): <https://www.gov.uk/guidance/working-safely-during-coronavirus-covid-19>

9.3 Draft Government Guidance: pavement licences (outdoor seating proposal): <https://www.gov.uk/government/publications/pavement-licences-draft-guidance/draft-guidance-pavement-licences-outdoor-seating-proposal#deemed-licences-and-conditions>

9.4 Government Guidance on Inclusive Mobility: <https://www.gov.uk/government/publications/inclusive-mobility/inclusive-mobility>

10 Reasons for Recommendations

10.1 To ensure awareness of and compliance with legal obligations to facilitate and support businesses within the Borough to transition from lockdown and to boost economic recovery.

10.2 To ensure efficient decision making and compliance with statutory time frames and avoid Members from becoming overwhelmed by applications, and administration of pavement licences.

10.3 To support businesses and the local economy by enabling premises to operate on the highway without imposing additional charges.

10.4 To ensure going forward that the functions sits within the remit of the Environment and Licensing Committee responsible for licensing functions of the Council.