

Report to Environment and Licensing Committee

Subject: Pavement Licences - The Levelling Up and Regeneration Act 2023 making permanent the provisions set out in the Business and Planning Act 2020

Date: 11 June 2024

Author: Head of Environment

Purpose

To update Members that the functions under Part 1 of the Business and Planning Act 2020 (“the B&P 2020 Act”) have been made permanent under The Levelling Up and Regeneration Act 2023 (“the LUR 2023 Act”) and the work officers are doing with regards to this.

To seek approval that the functions under Part 1 of the Business and Planning Act 2020 be delegated to Director.

Recommendation

- THAT:**
1. Members note that the functions under Part 1 of the Business and Planning Act 2020 have been made permanent by The Levelling Up and Regeneration Act 2023.
 2. Members delegate the functions under Part 1 of the Business and Planning Act 2020 to Director.
 3. Members note that officers are drafting a policy for pavement licensing and this will be submitted to the Committee for approval in due course.
 4. Members note that officers are working on the fee setting for pavement licensing and this will be submitted to the Committee for approval in due course.

1 Background

- 1.1 The B&P 2020 Act received Royal Assent and came into effect on 22 July 2020. The Act allowed operators of businesses selling food and drink to apply to their local authority for a pavement licence, which gave 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 for the consumption of food and drink.

- 1.2 Under the B&P 2020 Act, the pavement licensing regime was operated by the appropriate local authority, which is the district council in whose area relevant premises are situated. This was a temporary provision aimed to support and enable businesses selling food and drink to be able to remain open and serve customers during the Covid-19 pandemic whilst ensuring the business adhered to the then social distancing restrictions and guidance. The provisions were initially until then end of September 2020 and have been extended annually until the end of September 2024 to continue to support food and drink businesses that had been affected by the pandemic and during the current cost of living crisis.
- 1.3 The LUR 2023 Act makes permanent the provisions set out in the B&P Act from 31st March 2024. This will continue to provide much needed income for businesses and continue to protect as many hospitality jobs as possible.
- 1.4 The LUR 2023 Act introduces a number of changes including a fee cap of £500 for new applications and £350 for renewal applications. The consultation period for applications has been increased from 7 days to 14 days (excluding public holidays) and the determination period has been increased from 7 days to 14 days. The length of a licence has increased to up to two years and local authorities and been given new enforcement powers regarding unlicensed premises. Officers are currently working on the fee setting for the pavement licence applications. The current fee of £100 will remain until any new proposals are approved.
- 1.5 Under the temporary legislation Local Authorities had limited powers of enforcement and these only related to licences that had been granted by Gedling Borough Council. The amendments to the legislation introduce additional enforcement powers and officers are currently reviewing the new provisions and guidance in relation to drafting a policy for pavement licensing.
- 1.6 The Authority already has an electronic application process for pavement licence which will continue to be used subject to any amendments required by the new provisions.

2. Proposal

- 2.1 It is proposed that the changes made by the LUR Act 2023 to the B&P Act 2020 are noted.
- 2.2 The functions under the B&P 2020 Act include the power to grant, refuse, revoke and vary pavement licences. Due to the previous regime being dealt with at Director and officer level it is proposed to continue this under the new permanent regime with a delegation to Director of the functions under Part 1 of the B&P 2020 Act.
- 2.3 It is proposed that a policy is drafted to deal with pavement licensing now the function will be dealt with by the Council on a permanent basis. Along

with establishing a fee setting procedure. Both of these will be brought back to Committee for approval at a future date.

3 Alternative Options

- 3.1 To not delegate the functions under Part 1 of the Business and Planning Act as amended to Director level. This would result in every application for a pavement licence being referred to Committee resulting in an unnecessary burden on officers and Members.

4. Financial Implications

- 4.1 Officers are currently working on fee setting within the provisions of the Act and these will be reported to a future meeting of the Committee for approval.
- 4.2 It is unclear how this new process will affect the Council in terms of workload as up to the date this was made permanent the issuing of pavement licences for food and drink premises was still administered between the Council under the B&P Act 2020 and the Nottinghamshire County Council under the Highway Act 1980. The Council will be seeking information from Nottinghamshire County Council in due course as to the numbers of licences involved but initially the process will sit with the Licensing Team in Public Protection until a full assessment of the addition workload can be undertaken.
- 4.3 There are therefore no proposals at this time to take on additional resource and any costs associated with the processing of applications will be met from existing budgets.

5 Legal Implications

- 5.1 In order to continue fulfil our statutory functions under the B&P 2020 Act and to not overburden Members such a delegation would be appropriate in the circumstances.
- 5.2 Any fee levied for a pavement licence application must be set on a cost recovery basis.
- 5.3 Although not a statutory requirement it would be advisable to have a policy dealing with pavement licences to enable consistency and transparency when dealing with applications and any enforcement action.

6. Equalities Implications

- 6.1 EIA – attached at Appendix 1

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:

Drafted by the Head of Environment