



Licensing Urgency Sub-Committee

Date	16 June 2021
Classification	For General Release
Title or report	Delegation of Powers under the Business and Planning Act 2020
Report of	Director of Public Protection & Licensing
Decision maker	Licensing Urgency Committee
Wards involved	All Wards
Financial summary	There are no direct financial implications as a result of this report.
Report author and telephone	Andrew Ralph Head of Licensing & Regulatory Services

1 Summary

- 1.1. In July 2020, the Business and Planning Act 2020 (“the Act”) was introduced by the Government. The Act introduces a ‘pavement licence’ scheme so that operators of businesses selling food and drink may apply to their local authority for authorisation to put removable furniture such as tables and chairs on the highway in front of or adjacent to their premises so that their customers can eat and drink outside their premises.
- 1.2. This is temporary legislation until 30 September 2020 and the aim of the legislation is to provide a quicker and cheaper process for businesses to gain permission to use pavement areas outside their premises to enable them to seat customers safely outside and continue to trade during the period of the coronavirus pandemic whilst enabling customers to adopt social distancing measures by using outside spaces.
- 1.3. The Act came into force on 22 July 2020, and applicants began to apply for Pavement Licences immediately and therefore in order to start processing applications, set the fees payable and the standard conditions, the Chief Officer made an urgent decision in consultation the Chair of the Licensing Committee and two other Members of the Licensing Committee to approve the delegations to officers to process applications, and approve the fees and the standard conditions under the Urgency procedure of the Constitution. The Decision was made on 23 July 2020 and a copy of his report is attached as Appendix A.
- 1.4. As the Act is now expected to be extended until September 2022, this report is asking the Licensing Committee to delegate all functions, powers and duties under the Act in relation to the pavement licence regime (including in relation to revocations) to the



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Director of Public Protection and Licensing and to note the decisions made by the Chief Officer on 23 July 2020, the Interim Executive Director for Environment & City Management.

2. Recommendations

- 2.1 That all the functions, powers and duties contained in the Business and Planning Act 2020 in respect of pavement licences are delegated to the Director of Public Protection and Licensing, including enforcement action and determining revocations.
- 2.2 That the power to determine a suitable revocation process and to make amendments to that process, as he considers appropriate, is delegated to the Director of Public Protection and Licensing.
- 2.3 That the Committee notes that a maximum fee of £100 has been determined to be payable for each application for a Pavement Licence under the Business and Planning Act 2020.
- 2.4 That Committee notes that the standard local conditions attached in Appendix A, have been agreed and are attached to all applications granted or deemed granted for Pavement Licences made under the Business and Planning Act 2020 and that any subsequent amendments to the standards conditions may be made by the Director of Public Protection and Licensing in consultation with the Chair of the Licensing Committee.
- 2.5 That the Committee notes that officers of the Licensing Authority have been authorised to determine Pavement Licences applications and issue relevant licences under the Business & Planning Act 2020.

3. Reasons for the Decision

- 3.1 The decision made on 23 July 2020, by the Chief Officer, had the support of the Chair of the Licensing Committee and two members of the committee. However, as the Act is likely to be extended to September 2022, it is good practice to bring the decision to the attention of the Licensing Committee.
- 3.2 To ensure that all functions, powers, and duties under the Act in relation to pavement licence regime are delegated to the Director of Public Protection and Licensing as the Act is now expected to be extended until September 2022.

4. Pavement Licences

- 4.1 The Act was introduced to parliament on 29th June 2020 and came into force on 22nd July 2020. The Act contains measures intended by the Government to assist businesses and communities to recover from economic dislocations caused by the coronavirus pandemic. Among these is a fast track procedure for pavement licences.
- 4.2 A pavement licence is a licence which allows a business to place removable furniture (for example, tables and chairs) on certain highways (for example, pavements) outside



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and adjacent to their premises to aide social distancing, by allowing their customers to consume food or drink in the outside area.

- 4.3 When the Act came into force, it did not allow for time for a report to go to the Licensing Committee, and the Chief Officer was of the view that an urgent decision was needed. Therefore, he made the decision, in accordance with his delegations, and notified the Chair of the Licensing Committee and two other Members of the Licensing Committee of his intention to make the decision on Thursday 23 July.

Fees

- 4.4 The Act allows a fee to be determined by the Local Authority of up to £100. In this case it was recommended that the maximum fee be determined because this sum will help to pay for the officer time spent in processing applications. The fee of £100 for each application does not cover all of the time expended by officers, but the Council is not able to charge a higher fee under the Act. This fee was also in keeping with the Fast Track Licence that had been introduced by the council for the period between the reopening of the hospitality, on 4 July, and the introduction of the new legislation.

Conditions

- 4.5 The Act sets out national conditions that will be automatically attached to each pavement licence granted or deemed to be granted, but it also allows the Council to set local conditions which will also be attached to pavement licence granted or deemed granted. The conditions included in the Chief Officer Report are considered appropriate and proportionate and are attached to all pavement licences. The local conditions are specified in Appendix A below.

Application Process

- 4.6 An application for a licence must be made electronically and include a fee set by the Council.
- 4.7 The streamlined process provides for a seven-day consultation period starting the day after an application is received. During the consultation period, the business must display a notice outside the premises, and the Council must publish the application and invite representations on it.
- 4.8 The Council must make a decision on the application within seven days after the end of the consultation period. If it fails to do so, the application is deemed to be granted as made.
- 4.9 The Council must take into account any representations which it has received during the consultation period when deciding whether to grant an application. It must also consult the highway authority and such other persons as it considers appropriate. The Council must refuse the application if granting it would prevent access to the highway for highway users, as described in the act.

Revocation

- 4.10 The Act identifies a number of reasons why it could be considered appropriate to revoke a pavement Licence. As the Business and Planning Act 2020 is now likely to be extended until September 2022, the delegation of all powers under the Act including



the power to revoke a licence is being sought to be delegated to the Director of Public Protection and Licensing.

4.11 The reasons why a pavement licence could be revoked are laid out in the Act and include:

- where the licence holder has breached one or more of the conditions of the licence;
- If 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,
- If there is a risk to public health or safety,
- Where anti-social behaviour or public nuisance is being caused or risks being caused,
- Where the highway is being obstructed (other than by anything done by the licence-holder pursuant to the licence),
- Where anything material stated by the licence-holder in their application was false or misleading.

4.12 It is important that the revocation procedure is fair and gives each licence holder notice of the application to revoke and a reasonable opportunity to present their representations in relation to the proposal.

4.13 Where it becomes necessary to consider the revocation of a pavement licence, licence holders will be given 7 days' notice of the intention to revoke, where possible. In the case of an emergency, the Council may have to give a shorter notice period. The letter will outline the circumstances that have given rise to the need to consider revocation and the licence to which it affects. In the case of a breach of conditions, consideration will be given as to whether it is appropriate to serve a notice initially asking the licence holder to remedy the breaches. However, the Council will always have the discretion to seek revocation where it considers it is appropriate to do so.

4.14 Once the notification period has expired a report will be prepared setting out the details of the licence held, the reasons why revocation is being considered, the licence holder's response (if any) and the recommendation to revoke.

4.15 The Director of Public Protection and Licensing will then decide based on the report presented whether it is or is not appropriate to revoke the licence. Where a decision is made to revoke a licence, the licence holder will be notified in writing and revocation will take effect from such date notified by the Licensing Authority.

Appeal Rights

4.16 There is no statutory right of appeal against decisions to refuse a licence, place conditions on one or revoke a licence. However, such decisions may be subject to challenge by way of a Judicial Review.



5. Financial Implications

- 5.1 The fee for applying for a licence under this process, is capped at £100. The £100 fee for each application does not fully cost recover, but the Council is unable to charge a higher fee under the Act. The additional costs associated with this process are met within existing resources.
- 5.2 Since April 2021, the Licensing Service has received 507 licences under the legislation, generating approximately £50,700. This will be off set against the cost of determining the licences and all other costs will be met from existing resources.

6. Legal Implications

- 6.1 The legal implications are contained within the body of this report.

7. Equality Implications

- 7.1 S.149 of the Equality Act 2010 places a duty on local authorities to have due regard to the need to eliminate unlawful discrimination, to advance equality of opportunity between people who share a protected characteristic and to encourage good relations between those who share a protected characteristic and those who do not. The Council has had due regard to this duty when setting the fees and specifying the conditions which should be attached to the pavement licence.
- 7.2 When determining applications, the licensing authority will give due regard to the public and highway safety of other highway users in line with all the criteria it will take into account in determining whether or not an application should or should not be granted. The statutory conditions also take account of the needs of persons with mobility and visual impairments.

Additional Papers

Appendix A: Chief Officer Report of 23 July 2020