

EXECUTIVE

Friday, 10 July 2020

11.00 am

Membership: Councillors Ric Metcalfe (Chair), Donald Nannestad (Vice-Chair), Chris Burke, Bob Bushell, Rosanne Kirk and Neil Murray

Officers attending: Angela Andrews, Democratic Services, Kate Ellis, Jaclyn Gibson, Daren Turner, Simon Walters and Carolyn Wheeler

Virtual Meeting

To join this virtual meeting please use the below link:

<https://zoom.us/j/99932577970>

Alternatively, please join the meeting via telephone by calling **0330 088 5830** using the following ID:

999 3257 7970

A G E N D A

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1. Confirmation of Minutes - 14 May 2020	3 - 6
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Please note that, in accordance with the Members' Code of Conduct, when declaring interests members must disclose the existence and nature of the interest, and whether it is a disclosable pecuniary interest (DPI) or personal and/or pecuniary.	
ECONOMIC GROWTH	
3. Business and Planning Bill	7 - 12

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Present: Councillor Ric Metcalfe (*in the Chair*),
Councillor Donald Nannestad, Councillor Chris Burke,
Councillor Bob Bushell, Councillor Rosanne Kirk and
Councillor Neil Murray

Apologies for Absence: None.

117. Confirmation of Minutes - 24 February 2020

RESOLVED that the minutes of the meeting held on 24 February 2020 be confirmed.

118. Declarations of Interest

No declarations of interest were received.

119. Procedure Rules Relating to Remote Executive Meetings

Purpose of Report

To consider the adoption of procedure rules to facilitate remote meetings of the Executive.

Decision

That the revised procedure rules relating to remote meetings, be approved.

Alternative Options Considered and Rejected

None.

Reason for Decision

The adoption of revised procedure rules relating to remote meetings of the Executive covered the period in which Council members were unable to meet in person, due to the impact of the coronavirus, and included provision for video conferencing and live interactive streaming.

The Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panel Meetings) (England and Wales) Regulations 2020 made provision for remote attendance at, and remote access to, council meetings held on or before 7 May 2021.

The regulations enabled the Council to hold meetings without all, or any, of the members being physically present in a room. This allowed for remote meetings through electronic, digital, virtual locations, live webcast, live interactive streaming, video and telephone conferencing.

120. Covid19 - Financial Challenges

Purpose of Report

To set out the likely high-level financial challenges arising as a result of Covid19 and the Council's response to this unprecedented financial situation.

Decision

That the Executive:

- (1) Notes the significant financial challenges that the Council faces.
- (2) Endorses the urgent actions that are being undertaken in response to this.
- (3) Tasks officers to develop further these actions and options for consideration, as part of an Emergency Budget, if no further financial resources are forthcoming from the Government.

Alternative Options Considered and Rejected

None.

Reason for Decision

The report confirmed that Covid19 was taking its toll on the financial resilience of the Council as income streams were reducing, debt recovery was being deferred and there was a growing necessity to incur costs to ensure services were being provided throughout this difficult period.

In response to calls from the sector the Government had allocated a total of £3.2 billion of grant funding to support local authorities. The allocation of the original £1.6 billion was very heavily weighted towards social care authorities with District Councils only receiving a small share. The allocation of the second tranche of £1.6 billion was based on a higher proportion for District Councils but was based on population. This simple form of allocation did not take into account the individual nature of different types of authority. Lincoln, with its tight urban boundary, high daytime economy and high need population, had been severely disadvantaged by this method of allocation.

The Council was currently forecasting a shortfall on the General Fund budget of approximately £3 million in 2020/21 after the allocation of £1 million of government grant funding. The Housing Revenue Account was forecasting a £1 million shortfall for which no government support has been provided. In response to this the Council was undertaking a number of urgent actions focusing on extensive lobbying and media campaigns, controls to limit expenditure, the repurposing of Vision 2025 and an emergency budget.

The Council had responded quickly to the current crisis to support its residents and businesses, delivering crucial and much needed services. Local support systems had been set up to help the vulnerable and the homeless and had worked at pace to deliver financial lifelines to local business. Whilst at the same time the authority continued to empty the bins, keep parks open, pay benefits and carry out emergency housing repairs.

Moving forward into the recovery phase the Council's ability to lead on, finance and support key practical and relevant interventions would be critical to the recovery of Lincoln and Lincolnshire's economy. Further details were set out in the report, summarising potential financial challenges the Council faced across a number of areas, including:

- exceptional costs of dealing with Covid19;
- increased service demand in the short term and long term;
- impact on local taxation;
- loss of income;
- impact on Towards Financial Sustainability Programme;
- impact on Capital Programme.

Councillor Ric Metcalfe, Leader of the Council, concurred that the government had a greater willingness to assist local authorities in respect of the additional costs they had incurred as a result of the outbreak but rather less in support of the significant loss of income that some Councils were facing. The City of Lincoln Council had already lost a substantial amount of income as a result of the outbreak that it would not be able to recover.

Councillor Metcalfe said that the model currently used by the government to provide support, based on population, put cities like Lincoln at a disadvantage as its population effectively doubled during the day as they served retail, travel to work and a significant number of tourists every year. The demands placed on those authorities was therefore much greater than the residential population of their respective boundaries. Work was underway to identify those authorities of similar characteristics to Lincoln who would have also been significantly disadvantaged by the formula used by the government in order to strengthen lobbying. From the City Council's perspective, Councillor Metcalfe reported that lobbying had already taken place with the Member of Parliament for Lincoln, the Leaders and Chief Executives of all District and County Councils in Lincolnshire, the Local Government Association and the District Council Network.

The Council's Chief Finance Officer highlighted that this was not solely a problem for this financial year and that, moving forward, there would be an impact on the Council Tax and Business Rates bases, together with some other income streams, meaning that they would not return to what they were prior to the outbreak. People's working and shopping habits were likely to change, which would mean lower levels of car parking income, for example.

Councillor Metcalfe, in response, reminded the Executive that any decisions taken by the Council now would need to bear in mind the longer term sustainability of the authority's finances and Medium Term Financial Strategy. The Chief Finance Officer added that the Council's reserves could be used, but this in turn would affect sustainability going forward.

The Council's Chief Executive confirmed that the City of Lincoln Council and other authorities had been asked to submit further information to the government but there were currently no guarantees or reassurances centrally of further financial support at this time. It was therefore vitally important that the Council ensured it was itself financially sustainable. However, in support of this a helpful element of support from the government would be to provide greater freedoms and flexibilities to local authorities, particularly around borrowing. Councillor Metcalfe agreed that this would be more manageable in terms of transitioning and

it was noted that similar freedoms were granted to those local authorities impacted by the Icelandic banking crisis.

Councillor Metcalfe confirmed that considerable thought was being given as to how the Council's work places could be re-engineered over time to facilitate a return to work. The Chief Executive confirmed that work was underway to ensure that everything necessary was in place prior to any phased return to work at the Council's premises. Further to the government's recent announcements in respect of relaxing some of the lockdown restrictions, further work was taking place in the city centre, Bailgate, transport hub and green spaces to ensure that a whole range of measures were in place to ensure people's safety. Councillor Metcalfe said that these were a few examples of a safe return being dependant on Councils having the ability to do what they normally did, and significantly more in addition, making financial support from the government even more important.

SUBJECT: BUSINESS AND PLANNING BILL

DIRECTORATE: CHIEF EXECUTIVE

REPORT AUTHOR: CAROLYN WHEATER, CITY SOLICITOR

1. Purpose of Report

- 1.1 To update Executive on the implications of the Business and Planning Bill and to seek necessary delegations for the pavement licence function and consider an option to delegate these powers to Lincolnshire County Council's Executive.

2. Executive Summary

- 2.1 In order to assist businesses with economic recovery and protect hospitality jobs, the Government has introduced the above legislation which sees a streamlined and cheaper route for businesses such as cafés, restaurants and bars to secure a licence to place furniture on the highway. This is a new function given to District Councils.
- 2.2 As this is a function normally reserved to the County Council under the Highways Act 1980, there is no provision under the Council's Constitution which gives the delegated authority to officers to grant/refuse such applications, seek a fee for such applications and apply any conditions.
- 2.3 In addition, Lincolnshire County Council has made a proposal that they take on the responsibility for implementing the legislative requirements which needs further consideration. Therefore, at the time of writing the report, this option needs to be included and would require the delegation of the function to Lincolnshire County Council.
- 2.4 The requirement to have these delegations in place requires urgent action as the Bill is likely to become law in the week commencing the 6th July 2020.

3. Background

- 3.1 A business which uses (or proposes to use) premises for the sale of food or drink for consumption (on or off the premises) can apply for a pavement licence. Businesses which are eligible include, public house cafes, bars, restaurants, snack bars, coffee shops and ice-cream parlours.
- 3.2 A licence permits the business to use furniture placed on the highway to sell or serve food and/or drink or allow it to be used by people for the consumption of food or drink supplied from, or in connection with the use of the premises.

- 3.3 The furniture which may be used can cover: counters or stalls, table, chairs, benches or other forms of seating and umbrellas, barriers, heaters and other articles used in connection with the outdoor consumption of food or drink. The furniture is required to be removable, it cannot be a permanent fixed structure, and should be able to be removed easily and stored away.
- 3.4 Fees can be set locally for a pavement licence, but are capped at a maximum of £100.
- 3.5 Licences can only be granted in respect of highways which are generally footpaths restricted to pedestrians or are roads and places to which vehicle access is restricted or prohibited. The grant of the pavement licence only permits the placing of furniture on the highway, other regulatory frameworks such as the need for alcohol licences and the need to comply with registration requirements for food businesses still apply.

If the applicant has a licence to serve alcohol on-premises, there will be a temporary amendment to the Licensing Act 2003 which will allow them to sell alcohol for consumption off the premises without needing to apply for a variation of their licence.

- 3.6 Once the application is granted, or deemed to be granted, the applicant will also benefit from deemed planning permission to use the land for anything done pursuant to the licence whilst the licence is valid.

4. Duration and Process

- 4.1 If the application is determined before the end of the determination period (which is 5 working days, beginning with the first day after the public consultation period) the Council can specify the duration of the licence subject to the minimum duration of three months. There is an expectation however, that the licence will be granted for the maximum of twelve months or more, unless there are good reasons for granting for a lesser period.
- 4.2 If a licence is deemed to be granted as the Council has not determined the application in the required timescale then the licence will be valid for a year. No licence whether granted, or deemed to be granted, will be valid beyond 30 September 2021.
- 4.3 Once all the required information is provided, the Council has 10 working days from the day after the application is made (excluding public holidays) to consult on and determine the application. This is 5 working days for public consultation and then 5 working days for consideration and determination of the application. If the Council does not determine the application within this 10 day period then the application will be deemed to have been granted.

The Applicant is required to fix a notice to the premises the day they submit the application to the Council. They must ensure the notice remains in place for the public consultation period which is 5 working days. The Council must consult with the Highway Authority. The Council must take into account representations from the public and the Highway Authority during the consultation period. The application and any representations received must be published.

- 4.4 The Council may impose conditions on the licence. Any conditions must include the national condition which states that clear routes of access along the highway must be maintained, taking into account the needs of disabled people and the recommended minimum footway widths and distances required for access by mobility impaired and visually impaired people.
- 4.5 Such local conditions will consider; public health and safety (ensuring that uses conform with the latest guidance on social distancing and reasonable crowd management measures); public amenity and accessibility.
- 4.6 The Council can grant the licence in respect of any or all of the purposes specified in the application; grant the licence and impose conditions or refuse the application.

There is no statutory appeal process for the decision, however it is suggested that there can be an internal review process, which could be through Licensing Committee.

- 4.7 If a condition imposed on a licence is breached the Council can issue a notice requiring the breach to be remedied and can take action to recover any costs. The Council can also revoke the licence if there are risks to public safety; the highway is being obstructed; there is anti-social behaviour or nuisance; false or misleading information was provided in the application; or the relevant notices were not affixed to the area.

5. Proposal from Lincolnshire County Council

- 5.1 On 1st July 2020, the Traffic Manager from Lincolnshire County Council wrote to all district councils and said:

‘... Lincolnshire County Council is proposing that, if a Council so wishes, it could delegate the pavement licensing function under the Business and Planning Bill to the executive of the County Council, who would be able to adapt the current licensing scheme to-ensure compliance with the new regulations’.

- 5.2 It is understood from a discussion between the Licensing Manager, the Legal Services Manager and the Traffic Manager that this service would be provided free of charge to the District Councils, and also they were suggesting that they would not charge the businesses either. This has not been confirmed.
- 5.3 The option of an agency approach with the County Council is being considered. Therefore, due to the potentially urgent nature of implementing this new legislation, it is proposed that this is reserved as an option to be further considered, the delegation of the function to the Executive of Lincolnshire County Council is approved, alongside delegating powers as set out in 9.2 below.

6. Strategic Priorities

6.1 Let's drive economic growth

As identified in the report, the Government has introduced this legislation to assist economic recovery and to protect jobs in the hospitality industry.

7. Organisational Impacts

7.1 Finance (including whole life costs where applicable)

The Council can charge a fee for an application for a pavement licence, this is capped at £100.

7.2 Legal Implications including Procurement Rules

As outlined in the report.

7.3 Equality, Diversity and Human Rights

The Public Sector Equality Duty means that the Council must consider all individuals when carrying out their day-to-day work, in shaping policy, delivering services and in relation to their own employees.

It requires that public bodies have due regard to the need to:

- Eliminate discrimination
- Advance equality of opportunity
- Foster good relations between different people when carrying out their activities

All licences will include the national condition as required by the Secretary of State in relation to clear routes of access and taking into account the needs of disabled people.

8. Risk Implications

8.1 (i) Options Explored

No other options have been explored. This is a requirement of the new legislation, if the Council does not have the authority or processes in place to deal with these applications, they will be deemed granted for a year with no local conditions.

9. Recommendation

- 9.1 That the Council enters into negotiations with Lincolnshire County Council following their proposal to take on the function of pavement licences, and delegates the decision whether to accept the proposal to the Strategic Director for Communities and Environment (or nominated representative) in conjunction with the Portfolio Holders for Economic Growth and Remarkable Place.

- 9.2 That, if the proposal is accepted, the Executive delegates this function to the Executive of Lincolnshire County Council.
- 9.3 That the Executive delegates to the Strategic Director for Communities and Environment (or nominated representative) in conjunction with the Portfolio Holders for Economic Growth and Remarkable Place, the authority to grant pavement licences (with or without conditions) or to refuse a pavement licence.
- 9.4 That the Executive delegates to the Strategic Director of Communities and Environment the power to establish a review panel made up of Licensing Committee members to consider any 'appeal' against the refusal of a licence.
- 9.5 That the Executive agrees a fee of up to £100 for a pavement licence.
- 9.6 That Licensing Officers, in conjunction with Legal Services, have authority to enforce conditions on a licence, or revoke a licence for the grounds outlined in the report.

Is this a key decision?	No
Do the exempt information categories apply?	No
Does Rule 15 of the Scrutiny Procedure Rules (call-in and urgency) apply?	No
How many appendices does the report contain?	None
List of Background Papers:	None

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