

**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 6<sup>th</sup> 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 1<sup>st</sup> 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