

SUBJECT: BUSINESS AND PLANNING ACT 2020

DIRECTORATE: COMMUNITIES AND ENVIRONMENT

REPORT AUTHOR: FRANCESCA BELL

1. Purpose of Report

- 1.1 To update Council on the implications of the Business and Planning Act 2020 and to seek necessary delegations to delegate these powers to Lincolnshire County Council's Highways department.

2. Executive Summary

- 2.1 In order to assist businesses with economic recovery and protect hospitality jobs, the Government introduced in 2020 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 was a new function given to District Councils in 2020 on a temporary basis up until September 30th 2021. In July 2021 central government announced this provision is to be extended until 30th September 2022.
- 2.2 Although City of Lincoln Council has administered these licences for the past year on a temporary basis, now this has been extended operationally this function would naturally align better with Lincolnshire County Councils Highways department who already issue Pavement licences under the Highways Act 1980.
- 2.3 Over the past year City of Lincoln Council have issued 21 licences. The rest of the district councils delegated this function to Lincolnshire County Council upon the introduction of the Act in 2020.
- 2.4 Lincolnshire County Council have proposed to accept the delegation of this legislation for the purpose of administering pavement licences on behalf of City of Lincoln Council.

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. This has been provided free of charge by City of Lincoln Council and will remain free if administered by Lincolnshire County Council.
- 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 2022.
- 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, 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 stating that :

'... 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 County Council, who would be able to adapt the current licencing scheme to ensure compliance with the new regulations'.

Following further conversation in August of this year we have ascertained that this offer remains.

- 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.
- 5.3 The option of an agency approach with the County Council is favoured due to the extension of pavement licences as issued under the provision of the Business and Planning Act 2020.

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. However, this function has been provided free of charge to date and it is proposed the Lincolnshire County Council continue to provide the service for free.

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 For City of Lincoln Council to continue to administer the licences.

To delegate the authority to process and administer the licences to Lincolnshire County Council.

9. Recommendation

9.1 That the Council enters into agreement with Lincolnshire County Council following their proposal to take on the function of pavement licences under the Business and Planning Act 2020.

- 9.2 That Council authorise the Strategic Director of Communities and Environment, in consultation with the Portfolio Holder, to finalise the terms of the delegation within the parameters set out in the report.
- 9.3 That Council accordingly delegates this function to the Highways Department of Lincolnshire County Council.

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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