

Decision Maker: GENERAL PURPOSES AND LICENSING COMMITTEE

Date: Tuesday 8 February 2022

Decision Type: Urgent Non-Urgent Executive Non-Executive Key Non-Key

Title: BUSSINESS AND PLANNING ACT 2020 DELEGATION OF POWERS AND PAVEMENT LICENSING POLICY

Contact Officer: Steve Phillips, Head of Health, Safety and Licensing
Tel: 020 8313 4659 E-mail: steve.phillips@bromley.gov.uk

Chief Officer: Executive Director of Environment & Community Services

Ward: (All Wards);

1. Reason for report

To support the hospitality sectors recovery and to allow the businesses to operate whilst managing the risks arising from the COVID-19 pandemic the Business and Planning Act 2020 (the Act) was given Royal Assent on 22 July 2020. The Act initially relaxed licensing and planning laws until 30 September 2021 by (a) making it easier for the hospitality sector to obtain permissions to seat and serve customers outdoors, creating a fast-track pavement licence application process and (b) enabling automatic extension of alcohol off-sales to premises that already had permission for on-sales. Through the Business and Planning Act 2020 (Pavement Licences) (Coronavirus) (Amendment) Regulations 2021 (the B&P amendment regulations) the government has now extended these temporary provisions until 30 September 2022.

The London Borough of Bromley Pavement Licensing Policy (the Policy) sets out the strategy aimed at facilitating the pavement licence application process whilst maintaining public safety during the COVID-19 pandemic and beyond. The policy has been amended to incorporate the provisions of the B&P amendment regulations.

The Current Pavement Licensing Policy is available for comment as part of this report

This Report provides background to the exercise of delegated authority of the Council to process and provide a decision under the Business and planning Act 2020. Specifically, in relation to Pavement Licensing and changes necessitated by administrative convenience to delegate authority to the Executive Director of Environment & Community Services to do all

things necessary to implement and operate the pavement licensing arrangements under the Business and Planning Act 2020

2. RECOMMENDATION(S)

Members are asked to:

1. Agree the streamlined application process as outlined in the Pavement Licensing Policy appended to this report.
 2. Agree the pavement licence duration period as outlined in the Pavement Licensing Policy appended to this report.
 3. Agree £100 fee for all pavement licence applications as outlined in the Pavement Licensing Policy appended to this report.
 4. Agree the continued delegation of powers to the Executive Director of Environment & Community Services and his officers to process the Business and Planning Act Pavement Licensing Regime.
-

Impact on Vulnerable Adults and Children

1. When making decisions under the Licensing Act 2003 the Council is required to promote the licensing objectives, one of which is the protection of children from harm.
 2. The Business and Planning Act does not specify objectives or requirements to promote any form of protection to vulnerable adults or children but the Council as a whole has a duty to safeguard children and vulnerable adults.
-

Corporate Policy

1. Policy Status: The Council has adopted a statement of its licensing policy under the Licensing Act 2003 for the period 2021 to 2026:
 2. BBB Priority: Children and Young People Excellent Council Quality Environment Safe Bromley Supporting Independence Vibrant, Thriving Town Centres Healthy Bromley Regeneration Not Applicable: Further Details
-

Financial

1. Cost of proposal: Estimated Cost No Cost Not Applicable: Further Details
 2. Ongoing costs: Recurring Cost Non-Recurring Cost Not Applicable: Further Details
 3. Budget head/performance centre: Public Protection
 4. Total current budget for this head: £1.250m
 5. Source of funding: Existing Revenue Budget 2021/22
-

Personnel

1. Number of staff (current and additional): 38.1
 2. If from existing staff resources, number of staff hours:
-

Legal

1. Legal Requirement: Statutory Requirement:
 2. Call-in: Not Applicable:
-

Procurement

1. Summary of Procurement Implications: None
-

Customer Impact

1. Estimated number of users/beneficiaries (current and projected): All residents of the Borough.
-

Ward Councillor Views

1. Have Ward Councillors been asked for comments? Not Applicable
 2. Summary of Ward Councillors comments: Not Applicable
-

3. COMMENTARY

The London Borough of Bromley is the licensing authority for a broad range of legislation and licensable activities.

The Business and Planning Act 2020 (the 'Act') was introduced on 22 July 2020. Due to the timing of the legislation and the last minute change from an executive function to a non-executive function, the Council Solicitor exercised powers under Article 15 of the Constitution (paragraph 15.2 (d)) to make changes to the Council's Constitution arising as a result of legislative changes brought about by the Business and Planning Act 2020 in relation to Pavement Licensing and changes necessitated by administrative convenience to delegate authority to the Executive Director of Environment & Community Services to do all things necessary to implement and operate the pavement licensing arrangements under the Business and Planning Act 2020 when enacted.

Accordingly, following the introduction of the Act, the Council, using the delegated powers authorised decision making and made provisions for the operation of the Pavement Licensing regime under the Act. The legislation was brought in specifically as a result of the covid pandemic, and was intended to be temporary in nature and so the delegation currently only has effect until 30 September 2021, when the legislation was originally intended to cease.

In light of the third lockdown and the continuation of the pandemic into 2022 and the ongoing impact this is having on the business sector, the Government have introduced secondary legislation which will see the pavement licence facility extended to 30 September 2022. As the current delegation has expired on 30 September 2021, this requires a further consideration as to delegation of these functions.

The Act permits premises to apply for a pavement licence to place furniture outside, adjacent to their premises on the public highway. In this context, furniture means stalls for selling or serving food or drink, tables and chairs and articles such as umbrellas, barriers and heaters.

The application process is intended to be streamlined and fast track in order to enable business to recover having reopened following lockdown by legally placing table and chairs and other furniture outside their premises to boost trade and assist with social distancing.

Part of the Act therefore introduced the concept of a fast track pavement licensing process which requires a 7 day consultation period and a 7 day determination period. This is different to the normally used street trading legislation which has a 28 day consultation period and thereafter sufficient time for determination. The implications for the authority if it fails to determine the matter within the 7 days is that the licence is deemed to be granted and the Council loses the ability to impose restrictions or bespoke conditions for the license applied for or to refuse it out right.

Accordingly, it was imperative not only that the Council had its processes and procedures in place in advance of the commencement of these extended provisions but also that there is a sufficiently expedient means of allowing determinations to be made.

The Act caps the fee which may be charged for such applications to £100 and the guidance recommends that such licenses be granted for a period of 1 year. This is significantly less than the Council charges in respect of an annual street trading licence under existing legislation. All existing licence holders were invited to re-apply for a pavement licence in advance of the expiry of their current licence on 30 September 2021 and that all licenses issued as a result, both renewal and new, shall have an expiry date of 30 September 2022.

Since August 2020, the London Borough of Bromley has received, processed and granted 124 applications of which 94 are currently live. as they have been renewed

The London Borough of Bromley Pavement Licensing Policy (the Policy) shown at Appendix 1, defines the application and determination process, the licence fee, duration, conditions and enforcement options where necessary.

The Policy currently states that a licence issued by the London Borough of Bromley can be issued for any period subject to a minimum of 3 months. The Policy is appended for comments and consideration of alterations that the committee may wish to implement. However the end date for all pavement licences under the Business & Planning Act 2020 currently must expire on the 30th Sept 2022 in accordance with the B&P Amendment Regulations.

In determining the applications, the principal matters the Council need to consider are set out in the Act and guidance and include the amount of available pavement to allow passers-by free, clear access and egress to/from and access along the pavement, especially wheelchair users, those with reduced mobility and the visually impaired and ensuring that there is no obstruction of statutory undertakers, utility providers or operators of an electronic communications code network in having access to any apparatus of theirs kept, installed, under, in, on or over the highway.

Accordingly authorisation is sought via a delegation of authority to the Executive Director of Environment & Community Services who will exercise further delegations to his officers to do all things necessary to implement and operate the pavement licensing arrangements under the Business and Planning Act 2020, as amended, including but not limited to the determination of standard conditions which apply, determining applications made at the fee set by the licensing

committee, revocation of licenses and authorizing officers to enforce and exercise these functions.

4. IMPACT ON VULNERABLE ADULTS AND CHILDREN

Licensing regimes provide for additional controls through specific permissions to undertake activities. The Licensing Act 2003 contain 4 licensing objectives one of which is protect children from harm.

Businesses and the Council are required to promote this objective in the way they operate or make decisions.

The Business and Planning Act does not provide this level of impact protection, however where they relate to alcohol premises this provision is extended to apply to the Pavement Licence as well. The Council as a whole however has a duty to protect children and vulnerable adults as well as to promote equality and should be fully aware of these duties when considering any application.

5. POLICY IMPLICATIONS

The Licensing Act 2003 require the Council to prepare, consult on and publish a statement of their licensing policy. This must be reviewed at least every 5 years under the Licensing Act.

The Pavement Licensing Policy in place until the 30th Sept 2022 is provided on a non-statutory provision to bring together the requirements on the Business and Planning Act 2020

Members should note these policies.

5.3 The current policy's are -

- Statement of Licensing Policy 2021 to 2026

http://www.bromley.gov.uk/downloads/file/226/statement_of_licensing_policy_2021-2026

- The Pavement Licensing Policy in place until 30th Sept 2022

[LBB pavement licence policy | London Borough of Bromley](#)

6. FINANCIAL IMPLICATIONS

6.1 The fee for temporary pavement licences has been fixed by the Government at £100.

6.2 For 2020/21, the issuing of 124 licences would have generated income of £12,400. For the current year, 94 licences have so far been issued generating income of £9,400.

6.3 The cost to the Council of processing each application and issuing of licences is estimated at c£230, including all oncosts and share of overheads – some £130 more than the fee received. However, the Government have recently announced New Burdens Grant funding for councils, with Bromley receiving £21,248 this year. A further allocation to be determined for 2022/23.

6.4 It is important to note the impact this scheme and the pandemic has had on the Council's permanent pavement licensing arrangements, which form part of the Street Trading

Licensing scheme managed with Environment and Community Services. Fees under this scheme are significantly higher and can range up to c£1,800 for a prime town centre location. In the current financial year, there is an estimated shortfall in income of £77k for this budget, partly reflecting businesses using the alternative, reduced fee fast-track process. Covid income compensation grant of £12k has been received from the Government this year in respect of these losses, resulting in a net estimated loss of £65k on this budget.

7. PERSONNEL IMPLICATIONS

No additional personnel were available to administer this scheme, the work being undertaken with existing resources.

8. LEGAL IMPLICATIONS

8.1 Decisions in relation to Pavement Licences are included in Schedule 1 (at B73) of the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 as a non-executive function, which therefore come under the remit of the General Purposes and Licensing Committee and can be delegated.

8.2 Section 3(9) of the Business and Planning Act 2020 is clear that any application made to the Council and not determined by the end of the determination period will be deemed granted, so the Council has no option but to agree a process to decide these applications or face uncontrolled licences. Officially adopting the extension of the legislation and extending the currently agreed process means the Council can continue imposing generic and specific conditions or reject applications (see s3(3)).

3 Determination of applications

(9) If the local authority does not make a determination under subsection (3) by the end of the determination period, the licence for which the application was made is deemed to be granted by the authority to the applicant.

8.3 The attached policy covers all necessary points, including enforcement, which is essential when legislation requires such a short determination period. Effective enforcement protects residents' rights and safeguards the Council's reputation.

8.4 Section 149 of the Equality Act 2010 applies to all functions of the Council and will specifically need to be considered during the decision making process for each and every application. Although some aspects are already included in the Business and Planning Act 2020 (mainly in relation to wheelchair users) not all are cited:

Part 11 Advancement of Equality

Chapter 1

Public Sector Equality Duty

149 Public sector equality duty

(1) A public authority must, in the exercise of its functions, have due regard to the need to—

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

8.5 As the Council has decided to include Climate Change at the heart of all its decisions, this aspect needs to be included in all decisions, strategic or operational, practicalities of which will vary depending on the type of application. In this instance, littering, re-use, noise, light and heat pollution should be considered for each application and strictly enforced.

9. PROCUREMENT IMPLICATIONS

None

10. EQUALITIES IMPLICATIONS

The Equality Act (2010) requires public bodies to have due regard to the need to:

- eliminate unlawful discrimination, harassment, victimization and any other conduct prohibited by the Act;
- advance equality of opportunity between people who share a protected characteristic and people who do not share it; and
- foster good relations between people who share a protected characteristic and people who do not share it.

The protected characteristics covered by the Act are age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation.

The recommendations are to extend delegated powers in relation to pavement licensing. There are no changes proposed to the licensing arrangements that have been operating under the Business and Planning Act 2020 since last summer. No equalities concerns have been raised under these licensing arrangements.

There is therefore no indication that the recommendations will have a disproportionate impact on any individuals or groups with a shared protected characteristic.

11. ENVIRONMENTAL IMPLICATIONS

There are no perceived environmental impacts associated with this report.

Non-Applicable Sections:	[List non-applicable sections here]
Background Documents: (Access via Contact Officer)	<p>Business and Planning Act 2020.</p> <p>The Business and Planning Act 2020 (Pavement Licences) (Coronavirus) (Amendment) Regulations 2021</p> <p>The Alcohol Licensing (Coronavirus) (Regulatory Easements) (Amendment) Regulations 2021</p>