

Decision Maker: GENERAL PURPOSES AND LICENSING COMMITTEE

Date: 8th November 2023

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

Title: BUSINESS AND PLANNING ACT 2020 DELEGATION OF POWERS AND PAVEMENT LICENSING POLICY EXTENTION TILL SEPTEMBER 2024

Contact Officer: Steve Phillips – Group Manager of Health & Safety, Licensing, ASB and Nuisance
Tel: 020 8313 4659 E-mail: steve.phillips@bromley.gov.uk

Chief Officer: Colin Brand – Director of Environment & Public Protection

Ward: All Wards

1. Reason for report

To support the hospitality sector's recovery and to allow businesses to operate whilst managing 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 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 Business & Planning amendment regulations) the government has now extended these temporary provisions until **30 September 2024**.

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. The policy has been amended to incorporate the provisions of the Business & Planning 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 Director of Environment & Public Protection to

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

2. RECOMMENDATION

Members are asked to:

- 1. Agree the continued delegation of powers to the Director of Environment & Public Protection and his officers to administer 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, however, the Council has a duty to safeguard children and vulnerable adults.
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Corporate Policy

1. Policy Status: The Council has adopted a statement of licensing policy under the Licensing Act 2003 for the period 2021 to 2026.
 2. MBEB Priority: Ambition 3 - For people to make their homes in Bromley and for business, enterprise and the third sector to prosper.
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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: £1.6m
- . Source of funding: Existing Revenue Budget 2023/24
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Personnel

1. Number of staff (current and additional): x3.5 FTE Business Support staff and x1 FTE Licensing Officer
 2. If from existing staff resources, number of staff hours: N/A
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Legal

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

1. Summary of Procurement Implications: None
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Customer Impact

1. Estimated number of users/beneficiaries (current and projected): All premises with, or who wish to apply for, a Pavement License, and all residents of the Borough.
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Ward Councillor Views

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

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

3.2 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 Director of Environment & Public Protection to do all things necessary to implement and operate the pavement licensing arrangements under the Business and Planning Act 2020 when enacted.

3.3 Accordingly, following the introduction of the Act, the Council, using the delegated powers authorised decision making, made provisions for the operation of the Pavement Licensing regime under the Act. The legislation was brought in specifically because of the Covid-19 pandemic and was intended to be temporary. The current delegation only has effect until 30 September 2021, when the legislation was originally intended to cease.

3.4 In light of the third lockdown and the continuation of the government's policy and recovery of the business sector, the Government have introduced secondary legislation which will see the temporary pavement licence legislation extended to 30 September 2024. As the current delegation expired on 30 September 2023, this now requires further consideration as to the delegation of the pavement licensing functions.

3.5 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 patio umbrellas, barriers and heaters.

3.6 The application process remains streamlined and fast track in order to enable businesses to boost trade and assist with social distancing. The fast-track pavement licensing process requires a 7-day consultation period and a 7-day determination period. This is different to the 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 application within 7-days is that the licence is deemed to be granted. Thus, the Council can lose the ability to refuse an application or to impose restrictions or bespoke conditions onto the license.

3.7 The current Act caps the fee which can 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 and does not cover the cost of administration of the license process.

3.8 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 2023, and all licenses issued as a result, both renewal and new, shall have now be given an expiry date of 30 September 2024.

3.9 Since August 2020, LB Bromley has received, processed and granted 124 applications. 94 are currently in the process of being re-determined.

3.10 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.

3.11 The Policy currently states that a licence issued by LB Bromley can be issued for any period subject to a minimum of 3 months. The Policy is appended for comment and consideration of any 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 of Sept 2024, in accordance with the B&P Amendment Regulations.

3.12 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 and from the area covered by the Pavement License, ensuring access along the pavement, especially for 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.

3.13 Accordingly authorisation is sought via a delegation of authority to the Director of Environment & Public Protection 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

4.1 The Licensing regime provides for additional controls through specific permissions to undertake licensable activities. The Licensing Act 2003 contain 4 licensing objectives one of which is to protect children from harm. Businesses and the Council are required to promote this objective in the way they operate and/or make decisions.

4.2 The Business and Planning Act does not explicitly consider public protection to the same level as the licensing regime, however, where they relate to premises undertaking the sale of alcohol the licensing objectives apply to the Pavement Licence as well. The Council has a duty to protect the public, which includes children and vulnerable adults, and to promote equality, and should be fully aware of these duties when considering any Pavement Licensing application.

4.3 There is some potential for Pavement Licenses granted without controlling conditions to inadvertently impede the passage of pushchairs, prams and wheelchairs however that is balanced with the improved access to the premises Pavement License area and the services and facilities they provide by those same persons.

5. POLICY IMPLICATIONS

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

5.2 The Pavement Licensing Policy is currently in place until the 30th of Sept 2023 and is provided based on a non-statutory provision to bring together the requirements of the Business and Planning Act 2020. Approval of this report's recommendation will extend that date to 30th of Sept 2024.

5.3 Members should note these current policies:

- Statement of Licensing Policy 2021 to 2026

- The Pavement Licensing Policy in place until 30th Sept 2024

[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 2021/22, the issuing of 117 licences generated income of £11,700. For 2022/23, 99 licences have been issued generating income of £9,900 and in 23-24, 71 licenses have been issued so far, for £7,100.

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 announced a New Burdens Grant funding for councils, with Bromley receiving £11,114 in 2022/23 and £21,248 in 2021/22. In 2021/2022 additional £2,000 were received from the Covid 19 grant and in 2020/21, £45,000 were received from the Compliance and Enforcement Grant. A further allocation of funding for this extension has not been provided for at this point.

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 £80k for this budget, partly reflecting businesses using the alternative, reduced fee fast-track process.

7. PERSONNEL IMPLICATIONS

7.1 No additional personnel were made available to administer the temporary Pavement Licensing scheme. This workstream will continue to be undertaken with existing staff 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 comes under the remit of the General Purposes & Licensing Committee, and thus the decision 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) of the Planning & Business Act below.

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

10.1 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.*

10.2 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.

10.3 The recommendation is to extend the current 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 to date.

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

11. ENVIRONMENTAL IMPLICATIONS

11.1 There are no further perceived environmental impacts associated with the recommendation of this report in comparison to the existing arrangements for temporary Pavement Licences.

Non-Applicable Sections:	[List non-applicable sections here]
Background Documents: (Access via Contact Officer)	<p>The 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>