

Report of the Managing Director

BUSINESS AND PLANNING BILL – NEW PAVEMENT LICENCES

1 Purpose of report

Members are asked to consider delegating authorisation for the administration and enforcement of new Pavement Licence provisions to officers and to set a fee for an application for a licence.

2 Executive summary

The report outlines details of the Business and Planning Bill and requests permission to delegate authorisation for administering and enforcing the provisions within the Bill to officers and to set a fee for application for a Pavement Licence.

3 Appendices

None

4 Proposed action:

Council is invited to RESOLVE;

4.1 to delegate authorisation for the administration and enforcement of the new Pavement Licence provisions to the Executive Director (Section 151 Officer), for further delegation to relevant officers within the Places team; and

4.2 to set a fee of £100 for an application for a pavement Licence.

5 Background

5.1 On 25th June 2020, the Government published the Business and Planning Bill which will make two significant licensing changes to support business as Covid-19 lockdown measures are relaxed:

- the creation of a new (temporary) "pavement licence" to be issued by district and borough councils authorising the use of the public highway by pubs, cafes, bars and restaurants; and
- any premises holding a licence authorising "on-sales" of alcohol is deemed to also authorise "off-sales".

- 5.2 The Bill completed all three stages in the House of Commons on 29 June 2020 and is expected to be made law by the end of July 2020.
- 5.3 There are existing provisions in the Highways Act 1980 for the issue of "pavement café licences" on a public highway. This process is administered by Northamptonshire County Council and is a fairly lengthy process involving a 28 day consultation period.
- 5.4 The government has created a new form of licence called a "pavement licence" which authorises public houses, restaurants, cafes or other drinking establishments to put removable furniture on part of the public highway for one of two purposes:
- for the licence holder to sell or serve food or drink from their premises; or
 - for customers to consume food or drink from the licence holder's premises.
- 5.5 The new pavement licences are to be administered by district and borough councils and not the county council and have a much quicker turn around time than existing licences. Following application there is an expectation that a decision will be made 7 days after a 7 day consultation period. Meaning that the process will take around 14 days from application.

6 Discussion

- 6.1 Local authorities are expected to offer businesses the opportunity to apply for a licence as soon as the legislation is enacted. The Environmental Health team are working with the Central Licensing Unit, hosted by East Northamptonshire Council, to implement an application process ready for the start date.
- 6.2 Local authorities are permitted to set a fee for an application for the pavement licence and this fee can be no more than £100. It is proposed that the fee is set at £100, to assist with recovery of the costs of processing and enforcing the licences. At this time it looks likely that most authorities within the county will have a £100 fee.
- 6.3 Authorities have the power to revoke a licence where it is shown to be having a negative impact on public health or safety, or is causing a nuisance to the local community. Any decision to revoke a licence will be authorised by the Assistant Director.
- 6.4 The Bill removes the requirement for planning permission or a street trading licence, therefore anything which is authorised under the terms of a pavement licence is deemed to also be authorised under the planning and street trading regimes.
- 6.5 The government has published draft guidance on the pavement licensing regime and this will be incorporated into the conditions of licensing produced.
- 6.6 The Bill does not include any consequential amendments to the Local Authorities (Functions and Responsibilities) (England) Regulations 2000, meaning that the grant of pavement licences is an executive function and not

the responsibility of the Licensing Committee. It is therefore proposed that officers have delegated authority to make decisions over the grant of licences and enforcement of pavement licence provisions. It is proposed that appeals are considered by the Principal Environmental Health Manager or Assistant Director. Delegation of decision making to officers will enable decisions to be made within the required 7 day period after consultation.

- 6.7 An applicant who is unhappy with the decision made by officers can make a complaint through the council's formal complaint process, with further option to escalate to the Ombudsman, to ensure that decision making is robust.
- 6.8 The Bill amends the Licensing Act 2003 to automatically authorise all premises licensed for "on-sales" only to also be licensed for "off-sales". This will permit the sale of alcohol within the area covered by the pavement licence, without the need for the business operator to apply for a variation to their Premises Licence.
- 6.9 The pavement licences and alterations to the Licensing Act are temporary and will automatically expire on 30 September 2021.

7 Legal powers

- 7.1 The Business and Planning Bill does not include any consequential amendments to the Local Authorities (Functions and Responsibilities) (England) Regulations 2000, meaning that the grant of pavement licences is an executive function and not the responsibility of the Licensing Committee (section 9D of the Local Government Act 2000).
- 7.2 The final reading of the Business and Planning Bill has been tabled in the House of Lords for 20th July, and assuming there are no amendments requiring further Commons debate, the Bill is expected to receive Royal Assent (and become an Act) at the end of July 2020.

8 Financial and value for money implications

The Business and Planning Bill allows for a maximum fee of £100 and it is proposed that the fee is set at this amount. The full cost of managing the application process and enforcing provisions has yet to be determined, however it is expected this will cost more than this fee taking in to account officer hours. Current administrative and enforcement resources will be utilised and it is anticipated that this can be incorporated within current budgets.

9 Risk analysis

Licences will be deemed to be granted if a decision is not made within the required 7 day period. This could result in a licence being granted in inappropriate areas, representing a safety risk. Procedures are however being put in place to mitigate these risks, including robust application processes.

Delegating authorisation to officers for decision making will assist in making decisions within the required time period.

10 Implications for resources

Officer resource will be required to implement the provisions, however additional income will be provided from increased fee collection. Additional resources are not considered to be required at this time.

11 Implications for equalities, and stronger and safer communities

The Bill will allow businesses to increase customer capacity within their premises which will assist to offset the changes having to be made to occupancy levels due to Covid-19 restrictions. This will hopefully assist with the financial security of these businesses.

There are potential negative impacts on the community, however, there are provisions within the Bill which will allow a licence to be revoked if it is found to have a negative impact upon safety, public health or nuisance levels.

12 Author and contact officer

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13 Consultees

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Shaun Darcy, Executive Director
Vicki Jessop, Assistant Director
Karen Denton, Assistant Director
Eric Symons, Assistant Director
Adrian Piper, Assistant Director
Bhupinder Gill, Chief Legal Officer

14 Background papers

Pavement licences: draft guidance:
<https://www.gov.uk/government/publications/pavement-licences-draft-guidance>