



City of Westminster

Committee Agenda

Title: **Licensing Urgency Sub-Committee**

Meeting Date: **Wednesday 16th June, 2021**

Time: **10.00 am**

Venue: **This will be a MS Teams virtual meeting.**

Members: **Councillors:**

Matthew Green (Chair)
Jim Glen
Aicha Less

**If you require any further information, please contact the
Committee Officer, Tristan Fieldsend.**

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Corporate Website: www.westminster.gov.uk

Note for Members: Members are reminded that Officer contacts are shown at the end of each report and Members are welcome to raise questions in advance of the meeting. With regard to item 2, guidance on declarations of interests is included in the Code of Governance; if Members and Officers have any particular questions they should contact the Head of Legal & Democratic Services in advance of the meeting please.

AGENDA

PART 1 (IN PUBLIC)

1. MEMBERSHIP

To note any changes to the membership.

2. DECLARATIONS OF INTEREST

To receive declarations by members and officers of the existence and nature of any pecuniary interests or any other significant interest in matters on this agenda.

3. DELEGATION OF POWERS UNDER THE BUSINESS AND PLANNING ACT 2020

Report of Andrew Ralph, Head of Licensing and Regulatory Services.

(Pages 7 - 20)

Stuart Love
Chief Executive
8 June 2021



Licensing Urgency Sub-Committee

Date	16 June 2021
Classification	For General Release
Title or report	Delegation of Powers under the Business and Planning Act 2020
Report of	Director of Public Protection & Licensing
Decision maker	Licensing Urgency Committee
Wards involved	All Wards
Financial summary	There are no direct financial implications as a result of this report.
Report author and telephone	Andrew Ralph Head of Licensing & Regulatory Services

1 Summary

- 1.1. In July 2020, the Business and Planning Act 2020 (“the Act”) was introduced by the Government. The Act introduces a ‘pavement licence’ scheme so that operators of businesses selling food and drink may apply to their local authority for authorisation to put removable furniture such as tables and chairs on the highway in front of or adjacent to their premises so that their customers can eat and drink outside their premises.
- 1.2. This is temporary legislation until 30 September 2020 and the aim of the legislation is to provide a quicker and cheaper process for businesses to gain permission to use pavement areas outside their premises to enable them to seat customers safely outside and continue to trade during the period of the coronavirus pandemic whilst enabling customers to adopt social distancing measures by using outside spaces.
- 1.3. The Act came into force on 22 July 2020, and applicants began to apply for Pavement Licences immediately and therefore in order to start processing applications, set the fees payable and the standard conditions, the Chief Officer made an urgent decision in consultation the Chair of the Licensing Committee and two other Members of the Licensing Committee to approve the delegations to officers to process applications, and approve the fees and the standard conditions under the Urgency procedure of the Constitution. The Decision was made on 23 July 2020 and a copy of his report is attached as Appendix A.
- 1.4. As the Act is now expected to be extended until September 2022, this report is asking the Licensing Committee to delegate all functions, powers and duties under the Act in relation to the pavement licence regime (including in relation to revocations) to the



Director of Public Protection and Licensing and to note the decisions made by the Chief Officer on 23 July 2020, the Interim Executive Director for Environment & City Management.

2. Recommendations

- 2.1 That all the functions, powers and duties contained in the Business and Planning Act 2020 in respect of pavement licences are delegated to the Director of Public Protection and Licensing, including enforcement action and determining revocations.
- 2.2 That the power to determine a suitable revocation process and to make amendments to that process, as he considers appropriate, is delegated to the Director of Public Protection and Licensing.
- 2.3 That the Committee notes that a maximum fee of £100 has been determined to be payable for each application for a Pavement Licence under the Business and Planning Act 2020.
- 2.4 That Committee notes that the standard local conditions attached in Appendix A, have been agreed and are attached to all applications granted or deemed granted for Pavement Licences made under the Business and Planning Act 2020 and that any subsequent amendments to the standards conditions may be made by the Director of Public Protection and Licensing in consultation with the Chair of the Licensing Committee.
- 2.5 That the Committee notes that officers of the Licensing Authority have been authorised to determine Pavement Licences applications and issue relevant licences under the Business & Planning Act 2020.

3. Reasons for the Decision

- 3.1 The decision made on 23 July 2020, by the Chief Officer, had the support of the Chair of the Licensing Committee and two members of the committee. However, as the Act is likely to be extended to September 2022, it is good practice to bring the decision to the attention of the Licensing Committee.
- 3.2 To ensure that all functions, powers, and duties under the Act in relation to pavement licence regime are delegated to the Director of Public Protection and Licensing as the Act is now expected to be extended until September 2022.

4. Pavement Licences

- 4.1 The Act was introduced to parliament on 29th June 2020 and came into force on 22nd July 2020. The Act contains measures intended by the Government to assist businesses and communities to recover from economic dislocations caused by the coronavirus pandemic. Among these is a fast track procedure for pavement licences.
- 4.2 A pavement licence is a licence which allows a business to place removable furniture (for example, tables and chairs) on certain highways (for example, pavements) outside



and adjacent to their premises to aide social distancing, by allowing their customers to consume food or drink in the outside area.

- 4.3 When the Act came into force, it did not allow for time for a report to go to the Licensing Committee, and the Chief Officer was of the view that an urgent decision was needed. Therefore, he made the decision, in accordance with his delegations, and notified the Chair of the Licensing Committee and two other Members of the Licensing Committee of his intention to make the decision on Thursday 23 July.

Fees

- 4.4 The Act allows a fee to be determined by the Local Authority of up to £100. In this case it was recommended that the maximum fee be determined because this sum will help to pay for the officer time spent in processing applications. The fee of £100 for each application does not cover all of the time expended by officers, but the Council is not able to charge a higher fee under the Act. This fee was also in keeping with the Fast Track Licence that had been introduced by the council for the period between the reopening of the hospitality, on 4 July, and the introduction of the new legislation.

Conditions

- 4.5 The Act sets out national conditions that will be automatically attached to each pavement licence granted or deemed to be granted, but it also allows the Council to set local conditions which will also be attached to pavement licence granted or deemed granted. The conditions included in the Chief Officer Report are considered appropriate and proportionate and are attached to all pavement licences. The local conditions are specified in Appendix A below.

Application Process

- 4.6 An application for a licence must be made electronically and include a fee set by the Council.
- 4.7 The streamlined process provides for a seven-day consultation period starting the day after an application is received. During the consultation period, the business must display a notice outside the premises, and the Council must publish the application and invite representations on it.
- 4.8 The Council must make a decision on the application within seven days after the end of the consultation period. If it fails to do so, the application is deemed to be granted as made.
- 4.9 The Council must take into account any representations which it has received during the consultation period when deciding whether to grant an application. It must also consult the highway authority and such other persons as it considers appropriate. The Council must refuse the application if granting it would prevent access to the highway for highway users, as described in the act.

Revocation

- 4.10 The Act identifies a number of reasons why it could be considered appropriate to revoke a pavement Licence. As the Business and Planning Act 2020 is now likely to be extended until September 2022, the delegation of all powers under the Act including



the power to revoke a licence is being sought to be delegated to the Director of Public Protection and Licensing.

4.11 The reasons why a pavement licence could be revoked are laid out in the Act and include:

- where the licence holder has breached one or more of the conditions of the licence;
- If some or all of the part of the relevant highway to which the licence relates has become unsuitable for any purpose in relation to which the licence was granted or deemed to be granted,
- If there is a risk to public health or safety,
- Where anti-social behaviour or public nuisance is being caused or risks being caused,
- Where the highway is being obstructed (other than by anything done by the licence-holder pursuant to the licence),
- Where anything material stated by the licence-holder in their application was false or misleading.

4.12 It is important that the revocation procedure is fair and gives each licence holder notice of the application to revoke and a reasonable opportunity to present their representations in relation to the proposal.

4.13 Where it becomes necessary to consider the revocation of a pavement licence, licence holders will be given 7 days' notice of the intention to revoke, where possible. In the case of an emergency, the Council may have to give a shorter notice period. The letter will outline the circumstances that have given rise to the need to consider revocation and the licence to which it affects. In the case of a breach of conditions, consideration will be given as to whether it is appropriate to serve a notice initially asking the licence holder to remedy the breaches. However, the Council will always have the discretion to seek revocation where it considers it is appropriate to do so.

4.14 Once the notification period has expired a report will be prepared setting out the details of the licence held, the reasons why revocation is being considered, the licence holder's response (if any) and the recommendation to revoke.

4.15 The Director of Public Protection and Licensing will then decide based on the report presented whether it is or is not appropriate to revoke the licence. Where a decision is made to revoke a licence, the licence holder will be notified in writing and revocation will take effect from such date notified by the Licensing Authority.

Appeal Rights

4.16 There is no statutory right of appeal against decisions to refuse a licence, place conditions on one or revoke a licence. However, such decisions may be subject to challenge by way of a Judicial Review.



5. Financial Implications

5.1 The fee for applying for a licence under this process, is capped at £100. The £100 fee for each application does not fully cost recover, but the Council is unable to charge a higher fee under the Act. The additional costs associated with this process are met within existing resources.

5.2 Since April 2021, the Licensing Service has received 507 licences under the legislation, generating approximately £50,700. This will be off set against the cost of determining the licences and all other costs will be met from existing resources.

6. Legal Implications

6.1 The legal implications are contained within the body of this report.

7. Equality Implications

7.1 S.149 of the Equality Act 2010 places a duty on local authorities to have due regard to the need to eliminate unlawful discrimination, to advance equality of opportunity between people who share a protected characteristic and to encourage good relations between those who share a protected characteristic and those who do not. The Council has had due regard to this duty when setting the fees and specifying the conditions which should be attached to the pavement licence.

7.2 When determining applications, the licensing authority will give due regard to the public and highway safety of other highway users in line with all the criteria it will take into account in determining whether or not an application should or should not be granted. The statutory conditions also take account of the needs of persons with mobility and visual impairments.

Additional Papers

Appendix A: Chief Officer Report of 23 July 2020

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City of Westminster

Chief Officer Report

Decision Maker:	Chief Officer – Interim Executive Director for Environment & City Management
Date:	23 July 2020
Classification:	
Title:	<p>The determination of fees and approval of the standard conditions to be attached to all Pavement Licences granted under the Business & Planning Act 2020</p> <p>Reason for urgency - The Business and Planning Act became law on 22 July. It introduces a new licensing regime so that pavement licences can be granted. In order to enable applications to be processed immediately the fees and standard conditions need to be approved and this report seeks such approval.</p>
Wards Affected:	All Wards
Financial Summary:	<p>The fee for applying for a licence under the new process, is capped at £100. It is recommended that the maximum fee of £100 be charged.</p> <p>The service anticipates the council may issue up to 100 licences under the legislation, generating approximately £10,000. This will be off set against the cost of determining the licences and all other costs will be met from existing resources.</p>
Report of:	Annette Acik Director of Public Protection and Licensing

1. Executive Summary

- 1.1 The Business & Planning Act 2020 (“Act”) received Royal Assent on Wednesday 22 July 2020 and came into effect immediately. The Act introduces a new licensing regime whereby “pavement licences” can be granted by the Council so that the licence holder can place removable furniture over the highway to enable businesses to comply with social distancing rules as a result of the Coronavirus pandemic.
- 1.2 As the Act came into force yesterday, it is expected that applicants may wish to apply for a Pavement Licence immediately and therefore in order to start processing applications for pavement licences the fees payable and the standard conditions which will be attached to the licence needs to be approved. The Licensing Committee of the Council would normally approve fees. However, where matters are urgent the Chief Officer has the power to determine these matters.
- 1.3 Normally, to make an urgent decision the Chief Officer would circulate a report to three members, giving them four clear working days to provide any comments which must be taken into consideration before the Chief Officer takes the decision. However, where the matter in question is urgent the Chief Officer can take a decision before the expiration of the four clear days provided, they have advised the members being consulted of their intention to do so.
- 1.4 In this case the Chief Officer is of the view that an urgent decision needs to be made immediately and has, in accordance with his delegations, notified the Chair of the Licensing Committee and two other Members of the Licensing Committee of his intention to make the decision on Thursday 23 July.
- 1.5 The decision to take this approach was made with the agreement of the Chair of the Licensing Committee and the relevant paperwork was circulated to the three Members in advance of the decision.

2. Recommendations

- 2.1 That the Interim Executive Director for Environment & City Management, as the relevant Chief Officer, makes the following decisions:
 - That the maximum fee of £100 is determined to be payable for each application for a Pavement Licence under the Business & Planning Act 2020.
 - That the standard local conditions attached in Appendix B, are agreed and will be attached to all applications granted or deemed granted for Pavement Licences made under the Business & Planning Act 2020.
 - That any subsequent amendments to the standards conditions may be made by the Director of Public Protection and Licensing in consultation with the Chair of the Licensing Committee.
 - That all officers of the Licensing Authority are authorised to determine Pavement Licences applications and issue relevant licences under the Business & Planning Act 2020.

3. Reasons for Decision

- 3.1 It is a requirement of the Business & Planning Act 2020 that the fee for applications be determined and that standard conditions are approved before Pavement Licence Applications can be determined and issued.
- 3.2 The Act allows a fee to be determined by the Local Authority of up to £100. In this case it is recommended that the maximum fee be determined because this sum will

pay for the officer time spent in processing applications. The fee of £100 for each application will not cover all of the time expended by officers, but the Council is not able to charge a higher fee under the Act. This fee is also in keeping with the Fast Track Licence that was introduced by the council for the period between the reopening of the hospitality and the introduction of the new legislation.

- 3.4 In addition to the national conditions that will be automatically attached to each pavement licence granted or deemed to be granted, as specified in Appendix A of this report, the Act allows the Council to set local conditions which will also be attached to pavement licence granted or deemed granted. The Council considers it is appropriate and proportionate to attach the proposed local conditions specified in Appendix B below.
- 3.5 As the Business & Planning Act 2020 became law on Wednesday 22 July, it is expected that applicants may wish to apply for Pavement Licences immediately and there it is urgent that the fee be determined, and the standard conditions be approved.
- 3.6 As the Chief Officer considers there is an urgent need for these decisions to be made immediately, and having notified the Chair of the Licensing Committee and two other members that he intends to approve the fee payable and local conditions on 23 July 2020, the Chief Officer considers there is no need to wait for four clear working days until he makes the decisions.

4. Financial Implications

- 4.1 The fee for applying for a licence under the new process, is capped at £100. It is recommended that the maximum fee be determined because this sum will pay for processing the applications. The £100 fee for each application will not fully cost recover, but the Council is unable to charge a higher fee under the Act. The additional costs associated with the new fee will be all be met within existing resources.
- 4.2 The service anticipates the council may issue up to 100 licences under the legislation, generating approximately £10,000. This will be off set against the cost of determining the licences and all other costs will be met from existing resources

5. Legal Implications

- 5.1 The legal implications are contained within the body of this report.

6. Equality Implications

- 6.1 S.149 of the Equality Act 2010 places a duty on local authorities to have due regard to the need to eliminate unlawful discrimination, to advance equality of opportunity between people who share a protected characteristic and to encourage good relations between those who share a protected characteristic and those who do not. The Council has had due regard to this duty when setting the fees and specifying the conditions which should be attached to the pavement licence.
- 6.2 When determining applications, the licensing authority will give due regard to the public and highway safety of other highway users in line with all the criteria it will take into account in determining whether or not an application should or should not be granted. The statutory conditions also take account of the needs of persons with mobility and visual impairments.

BACKGROUND

PAPERS

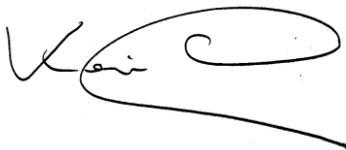
The Business and Planning Act 2020 and related guidance

Appendix A and B – Conditions to be attached to all successful Pavement Licence Applications under the Business & Planning Act 2020.

For completion by the Chief Officer for Environment & City Management

Declaration of Interest

I have no interest to declare in respect of this report



Signed:

Date: 23 July 2020

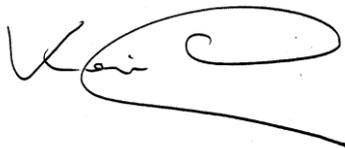
NAME: KEVIN GOAD

State nature of interest if any

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(N.B: If you have an interest you should seek advice as to whether it is appropriate to make a decision in relation to this matter)

For the reasons set out above, I agree the recommendation(s) in the report entitled



Signed

Chief Officer Environment & City Management (Interim)

Date : 23 July 2020

If you have any additional comment which you would want actioned in connection with your decision you should discuss this with the report author and then set out your comment below before the report and this pro-forma is returned to the Secretariat for processing.

Additional comments:

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If you do not wish to approve the recommendations, or wish to make an alternative decision, it is important that you consult the report author, the Head of Legal and Democratic Services, Strategic Director Finance and Performance and, if there are resources implications, the Strategic Director of Resources (or their representatives) so that (1) you can be made aware of any further relevant considerations that you should take into account before making the decision and (2) your reasons for the decision can be properly identified and recorded, as required by law.

Note: Your decision will now be published and copied to the Members of the relevant Policy & Scrutiny Committee. If the decision falls within the criteria for call-in, it will not be implemented until five working days have elapsed from publication to allow the Policy and Scrutiny Committee to decide whether it wishes to call the matter in.

Appendix A – Conditions to be attached to all successful Pavement Licence Applications under the Business & Planning Act 2020.

National conditions:

1. The Licensee must ensure that clear routes of access along the highway are 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 persons are provided at all times the licence is in operation.
2. Where the furniture on the relevant highways consists of seating for use by persons, for the purpose of consuming food or drink, the licence holder must make reasonable provision for seating where smoking is not permitted

Appendix B

Local conditions:

3. This licence only permits the use of table and chairs or other authorised furniture on the highway in the area designated on the plan attached to the licence.
4. Any tables and chairs or other authorised furniture for use pursuant to this licence is only authorised in connection with an adjacent premise which is to be used for the sale of food or drink for consumption on or off the premises.
5. No alcohol is to be sold or consumed from the designated area identified unless that sale and/or consumption is approved under the Licensing Act 2003 which includes any temporary authorisations for the sale of alcohol permitted pursuant to the Business and Planning Act 2020.
6. No furniture may be placed within the designated area identified on the plan other than that expressly permitted by the licence.
7. This Licence does not allow the use of loudspeakers, amplification or other similar equipment.
8. All furniture approved for use, including tables, chairs, barriers and heaters must be safe for public use and must be kept in good repair and condition.
9. Operators are required to manage their premises and outdoor seating areas in accordance with current social distancing measures and government guidance.
10. The Licensee must ensure that good order and behaviour is maintained at all times by people using any tables and chairs or other authorised furniture pursuant to this licence and that no nuisance is caused to residential or business neighbours.
11. The number of persons seated in the licensed area shall not exceed either the maximum capacity stated in the application form or on the pavement licence or the total number identified in the Covid-19 risk assessment, whichever is the lowest.
12. All customers consuming refreshments within the licensed area shall be seated.
13. The number of tables and chairs or other authorised furniture detailed on the pavement licence shall not be exceeded.

14. If a pavement licence is deemed to be granted, the number of tables and chairs or other authorised furniture shall not exceed the number specified in the application form and the licence must not exceed any other limitations on use that have been specified in the application form.
15. The trading area shall not exceed the dimensions specified on the pavement licence or any limits marked on the ground during trading hours.
16. The layout of tables, chairs and other authorised furniture must be in accordance with the plan appended to the licence at all times that the licence is in use.
17. All tables and chairs and other authorised furniture shall be removed immediately from the highway when reasonably required by the City Council, Metropolitan Police, emergency services, or any statutory undertaker or utility.
18. The tables and chairs and other authorised furniture shall not be placed on the highway before the time specified and is to be removed no later than 23:00 hours. Service at the tables should cease at 22:30 hours in order for this to be achieved. Trading may only take place on the days and during the times specified on the licence.
19. All tables and chairs and other authorised furniture that is used in connection with a pavement licence must be removable which means that it is not a permanent fixed structure and is able to be moved easily, and stored away at the end of use for the day.
20. A copy of the licence shall be displayed during the hours of trading in a prominent position agreed by the Council, either in the front window of the premises or nearby so as to be clearly visible from the outside to anyone wishing to inspect it.
21. No fixtures to or excavation of any kind shall be made in the surface of the highway, which shall be left entirely undisturbed.
22. The Licensee shall not use this licence unless it has public liability insurance cover in the sum of not less than £2 million and has provided a copy of that policy to the Licensing Authority.
23. All tables and chairs and other authorised furniture permitted by this licence must be completely removed from the licensed external area by the terminal hour permitted for the licence and stored inside the premises or stored in a designated area away from noise sensitive properties. Tables and chairs and other authorised furniture must be stored in such a way that they cannot be moved or used overnight.
24. Staff must regularly monitor the licensed area to ensure it is kept clean and tidy. Any litter or waste arising from use of the licensed area must be cleared away as soon as is practicable.
25. If a pavement licence is deemed to be granted, it will be subject to these standard local conditions.
26. The Council reserves the right to add additional conditions to individual licence applications where it is appropriate to do so.

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