

REPORT TO:	Licensing Committee 14 July 2021
SUBJECT:	Pavement Licensing The Business and Planning Act 2020
LEAD OFFICER:	Sarah Hayward, Interim Executive Director, Place
CABINET MEMBER:	Councillor Manju Shahul-Hameed Cabinet Member, Communities, Safety and Business Recovery
WARDS:	All

CORPORATE PRIORITY/POLICY CONTEXT/AMBITIOUS FOR CROYDON:

The Council's Corporate Plan 2018-2022 seeks to ensure that *Business moves here and invests, our existing businesses grow*. The covid pandemic has had a significant financial impact on business nationally, notably the hospitality sector. The Government introduced 'pavement licenses' via the Business and Planning Act 2020 in an effort to support hospitality businesses get back on their feet as they emerged from lockdown. Aiding the recovery (and therefore assisting with the growth) of the hospitality sector in the borough and supporting the extension of the 'pavement licensing' facility meets one of the aims of the Corporate Plan.

FINANCIAL IMPACT

The maximum cost for a pavement licence is £100 and this is less than the published fee that business would normally pay under the relevant street trading legislation which the Council issues licenses under however, the requirements of the Business and Planning Act 2020 are statutory rather than discretionary and so the Council must make the facility available.

1. RECOMMENDATIONS

That the Licensing Committee:

- 1.1 Delegate authority to the Interim Executive Director Place to do all things necessary to extend and continue 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, revocation of licenses and authorising officers to enforce and exercise these functions.
- 1.2 Set the fee for an application for a pavement licence at £100, which is the maximum fee permitted under the legislation for these licenses, such licenses to be granted for a period up to and including 30 September 2022.

2. EXECUTIVE SUMMARY

- 2.1 This Report provides background to the request that the Committee delegate authority to the Interim Executive Director Place to do all things necessary to extend and operate the pavement licensing arrangements under the Business and Planning Act 2020 as amended.
- 2.2 Members will recall that Pavement Licensing under the Business and Planning Act 2020 was initially only in force until September 2021. However, the Government, by secondary legislation is seeking to extend the pavement licensing provisions until 30 September 2022 at which point it is then proposed they will cease.

3. DETAIL

- 3.1 The London Borough of Croydon 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 Executive Director Place to do all things necessary to implement and operate the pavement licensing arrangements under the Business and Planning Act 2020 when enacted. This was reported to Committee and the report can be accessed here:
<https://democracy.croydon.gov.uk/documents/g2198/Public%20reports%20pack%2030th-Sep-2020%2018.30%20Licensing%20Committee.pdf?T=10>
- 3.3 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.
- 3.4 In light of the third lockdown and the continuation of the pandemic into 2021 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 expires on 31 September 2021, this requires a further consideration as to delegation of these 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 umbrellas, barriers and heaters.
- 3.6 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.

- 3.7 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.
- 3.8 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.
- 3.9 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. It is proposed that all existing licence holders be 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.
- 3.10 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.
- 3.11 As the expiry date for pavement licenses is to be extended by the Government from 1 October 2021 to 30 September 2022, this request seeks that decision making powers with regard to pavement licensing under the Act, be delegated to the Interim Executive Director of Place in order for the Council to continue to assist relevant businesses as they seek or continue to establish trade again following lockdown, whilst at the same time complying with the social distancing requirements set out by Government and the new legislative requirements by ensuring that the Council is able to publish and determine the applications within the very short time scale allowed for this purpose. It should be noted that the Act includes a requirement that publication by the authority take place by electronic means.
- 3.12 Accordingly authorisation is sought via a delegation of authority to the Interim Executive Director Place 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 authorising officers to enforce and exercise these functions.

4. CONSULTATION

4.1 There are no consultation requirements associated with this matter.

5. FINANCIAL AND RISK ASSESSMENT CONSIDERATIONS

1 Revenue and Capital consequences of report recommendations

	Current year	Medium Term Financial Strategy – 1 year forecast (as temporary legislation due to end on 30 September 2022)	
	2021/22	2022/23	
	£'000	£'000	
Revenue Budget available			
Expenditure			
Income	100	100	
Effect of decision from report			
Expenditure			
Income	100	100	
Remaining budget	<u>0</u>	<u>0</u>	<u></u>
Capital Budget available			
Expenditure	0	0	
Effect of decision from report			
Expenditure	0	0	
Remaining budget	<u>0</u>	<u>0</u>	<u></u>

2 The effect of the decision

The £100k figure above is the current budgeted income for street trading across the borough. Should the decision be approved then there will be no change to the current budgets although it will mean a reduced income until legislation reverts back to Street Trading Licenses. As this a temporary change due to temporary changes in the Business and Planning Act 2020 there is no reason to reduce these budgets at this stage. The cost of administration of this scheme are amalgamated in other budget lines but again no change is anticipated in budgetary requirement or cost.

3 Risks

If the recommendations in this report are not approved the Council will be operating against statute as per the Business and Planning Act 2020 and would risk future income for the council.

4 Options

As this is a statutory requirement under the Business and Planning Act 2020 there are no current alternative options to be considered.

5 Future savings/efficiencies

Although there are no future anticipated efficiencies from this paper once the temporary legislation is replaced by the original legislation additional income will be gained but it is not thought to exceed the current budget.

(Approved by: Matthew Davis, Deputy S.151 Officer)

6. LEGAL CONSIDERATIONS

- 6.1 The Head of Litigation and Corporate Law comments on behalf of the Director of Law and Governance that as set out in Part 3 of the Constitution, the Licensing Committee is responsible for all licensing, registration and related functions as set out in Schedule 1 of the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 as amended. The functions relating to pavement licensing under the Business and Planning Act 2020, as amended, are such licensing functions.
- 6.2 Unlike certain licensing matters, including certain functions under the Licensing Act 2003, the Licensing Committee is able to delegate the performance of the pavement licensing functions to officers to undertake and authority is sought by way of this report for such delegation particularly given the short time frames within which such decisions need to be made.
- 6.3 The remaining legal considerations are addressed within the body of the report.

Approved by Sandra Herbert, Head of Litigation and Corporate Law on behalf of the Director of Law and Governance & Deputy Monitoring Officer

7. HUMAN RESOURCES IMPACT

- 7.1 There are no perceived human resources implications associated with this report. If any should arise these will be managed under the Council's Policies and Procedures.

(Approved by: Jennifer Sankar, Head of HR Place and Housing for and on behalf of Sue Moorman, the Director of Human Resources)

8. EQUALITIES IMPACT

- 8.1 The Equality Act (2010) requires public bodies to have due regard to the need to:
- eliminate unlawful discrimination, harassment, victimisation 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.

8.2 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.

8.3 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.

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

Approved by: Gavin Handford, Director of Policy & Partnership

9. ENVIRONMENTAL IMPACT

9.1 There are no perceived environmental impacts associated with this report.

10. CRIME AND DISORDER REDUCTION IMPACT

10.1 There are no perceived crime and disorder implications associated with this report.

11. DATA PROTECTION IMPLICATIONS

11.1 **WILL THE SUBJECT OF THE REPORT INVOLVE THE PROCESSING OF 'PERSONAL DATA'?**

NO

(Approved by: Steve Iles, Director of Public Realm)

CONTACT OFFICER: Michael Goddard, Head of Environmental Health, Trading Standards and Licensing Ext. 61838

APPENDICES TO THIS REPORT

None

BACKGROUND DOCUMENTS: *[Complete for Part A reports only - list documents which have not been published previously]*