

For General Release

REPORT TO:	Licensing Committee 26 September 2022
SUBJECT:	Pavement Licensing The Business and Planning Act 2020
LEAD OFFICER:	Corporate Director, Sustainable Communities, Regeneration & Economic Recovery
CABINET MEMBER:	Cllr. Scott Roche Streets & Environment
WARDS:	All
CORPORATE PRIORITY/POLICY CONTEXT/AMBITIOUS FOR CROYDON: The Council's Corporate Plan 2018-2022 seeks to ensure that <i>Business moves here and invests, our existing businesses grow</i> . 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. This change based on 21/22-year end actuals is anticipated to cost the council £40k in lost income.	

1. RECOMMENDATIONS

That the Licensing Committee:

- 1.1 Delegate authority to the Corporate Director, Sustainable Communities, Regeneration & Economic Recovery 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.

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| 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 2023. |
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2. EXECUTIVE SUMMARY

- 2.1 This Report provides background to the request that the Committee delegate authority to the Corporate Director, Sustainable Communities, Regeneration & Economic Recovery 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 2022. However, the Government, by secondary legislation has further extended the pavement licensing provisions until 30 September 2023 at which point it is then proposed they will cease. There has however been a recent announcement of proposals that these provisions be made permanent next year. This will be subject to legislative changes and members will be updated as this progresses.

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 made only had effect until 30 September 2021, when the legislation was originally intended to cease.
- 3.4 However, in light of the third lockdown and the continuation of the pandemic into 2021 and the ongoing impact that was having on the business sector, the Government introduced secondary legislation which saw the pavement licence facility extended to 30 September 2022. As the existing delegation was going to expire on 30 September 2021, this required a further consideration as to delegation of the functions and on 14 July 2021, the Council's Licensing Committee further delegated the functions until 30 September 2022. The relevant Committee report can be accessed here:

<https://democracy.croydon.gov.uk/documents/s31242/Pavement%20Licensing%20Report.pdf>

- 3.5 Further amendments have now been made to the Business and Planning Act 2022 to extend these legislative provisions until September 2023 with the Business and Planning Act 2020 (Pavement Licences) (Coronavirus) (Amendment) Regulations 2022 coming into force. The Government has also published updated guidance on pavement licensing.
- 3.6 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.
- 3.7 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.
- 3.8 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.
- 3.9 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.
- 3.10 The Act caps the fee which may be charged for such applications to £100. The Business and Planning Act 2020 specifies a minimum statutory duration of 3 months. To help support local businesses, the guidance indicates that the expectation is that local authorities are pragmatic and will grant licences for 12 months (or until 30 September 2023 if shorter), unless there are good reasons for granting a licence for a shorter period such as plans for future changes in use of road space.. This fee 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 2022 and that all licenses issued as a result, both renewal and new, shall have an expiry date of 30 September 2023.
- 3.11 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.

3.12 As the expiry date for pavement licenses is to be extended by the Government from 1 October 2022 to 30 September 2023, this request seeks that decision making powers with regard to pavement licensing under the Act, be delegated to the Corporate Director, Sustainable Communities, Regeneration & Economic Recovery 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 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.

3.13 Accordingly authorisation is sought via a delegation of authority to the Corporate Director, Sustainable Communities, Regeneration & Economic Recovery 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)		
	2022/23 £'000	2023/24 £'000	2024/25	2025/26
Revenue Budget available				
Expenditure				
Income	(101)	(101)	(101)	(101)
Effect of decision from report				
Expenditure				
Income	(101)	40	40	40
Remaining budget	<u>0</u>	<u>(61)</u>	<u>(61)</u>	<u>(61)</u>
Capital Budget available				
Expenditure	0	0	0	0
Effect of decision from report				
Expenditure	0	0	0	0
Remaining budget	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>

2 The effect of the decision

The £101k figure above is the current budgeted income for street trading across the borough. Should the decision be approved and given the recent announcement that that the pavement license is likely to become permanent then there will an adverse £40k effect on the income budget (based on 21/22 actual income) from 23/24 financial year. It therefore likely that a realignment of this budget will be required either found within the Safer Community Budgets or through a Growth bid to the Corporate Centre. In the current financial year a pressure of £40k against this budget line will need to be reported.

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 given the likely permanent change is projected to result in a loss of £40k income. In 21/22 the Government paid a £21k compensatory amount to local authorities which it was indicated would be repeated in 22/23. This has not yet been confirmed but should this be the case this income will be used to offset the pressure stated above. Going into future years if any compensatory income is available this again will be used to offset any pressures, but this is unknown at this time. Additionally, there is an indication that a review of the £100 fee may be undertaken by the Government, again any changes that increase income levels will be utilised to offset pressures.

6 Approved by: Darrell Jones Acting Head of Finance SCRER

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 human resources implications associated with this report.

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, Programmes and Performance

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
12. OF 'PERSONAL DATA'?**

NO

(Approved by: Steve Iles, Director of Sustainable Communities)

CONTACT OFFICER: Michael Goddard, Head of Environmental Health, Trading Standards and Licensing Ext. 28259

APPENDICES TO THIS REPORT: None

BACKGROUND DOCUMENTS: None