

**Report for:** Regulatory Committee

**Title:** Business and Planning Act 2020 – Pavement Licence conditions and fees as part of the Covid 19 recovery measures

**Report**

**authorised by:** Eubert Malcolm Interim Assistant Director Stronger Communities & Waste

**Lead Officer:** Daliah Barrett – Licensing Team Leader

**Ward(s) affected:** All wards

**Report for Key/**

**Non Key Decision:** N/A

**1. Describe the issue under consideration**

- 1.1 Covid-19 has affected businesses across the economy. Many businesses have had to close for several months, and others have had to significantly modify their operations. As the economy starts to re-open, the Government wants to do all it can to support recovery, help businesses adjust to new ways of working and create new jobs.
- 1.2 The Business and Planning Act 2020 (the Act) came into force on 22nd July 2020 and is mandatory. It introduces a number of urgent measures to help businesses succeed in these new conditions over the coming months. The measures are temporary up until 30<sup>th</sup> September 2021 unless extended by the Government.
- 1.3 The Act introduces a new "Pavement Licence" regime that is to be administered by local authorities. It is designed to make it easier for premises serving food and drink such as bars, restaurants and pubs to seat and serve customers outdoors. Pavement licences may be granted subject to such conditions as the Council considers it reasonable to impose and the Council may publish those conditions.
- 1.4 This report sets out pavement licensing conditions to be considered and applied to pavement licences that are granted and seeks approval for those conditions.

**2 Recommendations**

- 2.1 The Committee is asked to:
  - i. Agree the pavement licence conditions as outlined in Appendix A which will be the Council's published standard conditions.
  - ii. Note that the Licensing Authority can set further conditions as required on a case by case basis.
  - iii. Agree the application fee of £100.

- iv. Note that the length of the grant of the licence cannot go beyond 30<sup>th</sup> September 2021 unless extended by the Secretary of State but there may be reasons to determine a shorter period on a case by case basis.

### **3. Alternative Options Considered**

- 3.1 Do nothing – This is not an option as the legislation carries deemed consent if the authority fails to deal with an application.
- 3.2 The Act requires a local authority to consider what conditions to apply to a pavement licence. The Council could have no published conditions but that would make enforcement difficult and leave the Council having to justify its reasons repeatedly when taking enforcement action.

### **4 Reasons for decision**

- 4.1 Covid-19 has affected businesses across the borough. Many businesses have had to cease trading for several months, and others have had to significantly modify their operations. As the economy starts to re-open, the Government wants to put measures in place to support recovery, help businesses adjust to new ways of working and create new jobs. This Act introduces a number of urgent measures to help businesses succeed in these new and challenging conditions over the coming months, and to remove short term obstacles that could get in their way
- 4.2 The Act includes measures for enforcement and revocation powers so councils can protect public safety and amenity by adopting conditions to safeguard the business as well as the public
- 4.3 The local authority can add conditions to the pavement licence and must publish standard conditions which it proposes to add to all pavement licences.
- 4.4 If the pavement licence is deemed granted it will still be subject to the Council's published conditions.
- 4.5 In order to ensure that the pavement licences are managed properly and that there is a proper use of the pavement without detrimental effects on other users, conditions are necessary.
- 4.6 The legislation effectively temporarily avoids the use of the London Local Authorities Act1990 for licensing tables and chairs on the pavement. Members should be aware that:
  - The fee amount will not fund the operation of the scheme by any local authorities and requires considerable work to be undertaken at a rapid pace. Whilst it is a cheaper route for the trade the regime will not be self-funding for local authorities.
  - If an application is not determined by the Council, it receives automatic (deemed) consent subject to any published conditions and therefore robust published conditions are important.
  - Demand is not known.
  - The short timeframes for Highways / ASB Enforcement officers and the public to consider applications.
  - Capped fees impact on the Street Trading budget see finance comments.
  - Businesses who currently have a street trading licence may be able to surrender that licence and apply for a new pavement licence. This will increase the administrative resources required in the Licensing team

- There could be increased crowds on the street consuming alcohol, this could give rise to increased concerns about anti social behaviour, noise nuisance and obstruction.
- Resources in Enforcement and Licensing will need to be considered to deal with any compliance and administration.
- Only Public Highways is caught by this legislation not Parks or car parks.
- The consideration of security and safety measures that can be put in place in crowded locations to mitigate/avoid potential threat from hostile vehicle attack.

## 5 Background information

### Pavement Licences Summary

5.1 The measures in the Act are designed to support businesses selling food and drink such as cafes, pubs and restaurants by introducing a temporary fast-track process for these businesses to obtain permission, in the form of a “pavement licence”, from the local council. This will permit the placement of street furniture such as tables and chairs on the pavement outside their premises. This will enable them to maximise their capacity whilst adhering to social distancing guidelines. The current processes for businesses to obtain these licences can be costly and time-consuming.

5.2 A brief summary of the Act’s provisions are set out below:

- 1) The types of business which may apply to the local authority for a “pavement licence” are those whose premises are used, or proposed to be used, as:
  - (a) as a public house, wine bar or other drinking establishment; or
  - (b) other use for the sale of food or drink for consumption on or off the premises.
- 2) A pavement licence permits street furniture to be temporarily placed on the highway.  
“Furniture” includes stalls for selling or serving food or drink, tables and chairs and articles such as umbrellas, barriers and heaters.
- 3) An application must be made by electronic means and be accompanied by a fee which will be set by the local authority, subject to a cap of £100.
- 4) The applicant must display a notice of the application on the premises and in addition, the local authority must publish the application, this will be placed on the Haringey website and invite representations within 7 days (excluding public holidays) of the application.
- 5) The local authority must consult the highways authority where the local authority is not itself the highways authority for the land. It must also consult such other persons as it considers appropriate. We intend to also consult with ASB Enforcement and Environmental Health regarding nuisance and with the Police.
- 6) The local authority may grant or reject the application and has 7 days to do so from the end of the 7 day consultation period. In granting the application, the Council may make its own determination as to how much of the space requested, the licence will cover.
- 7) A local authority can decide, when it is granting a licence, how long the licence should last for, or it can leave it open ended, in which case it will expire at the end of 30 September 2021 (unless this backstop date is extended by the Secretary of State).  
However, the licence must have a minimum duration of 3 months.

- 8) The local authority can add conditions to the licence and can publish conditions which it proposes to add to pavement licences.
- 9) If the local authority does not make a determination within the 7 days, that follow the 7 day consultation period, the licence is deemed to have been granted in the form in which the application was made. The deemed grant will be for a period of 12 months, (subject to not going beyond 30th September 2021).
- 10) Where a licence is deemed to have been granted, it is also deemed to include any conditions published by the local authority, any national conditions and any conditions made by the Secretary of State by way of regulations. Where a condition published by the Secretary of State is inconsistent with a condition attached to a licence by the local authority either expressly, or where the licence is deemed to be granted, by reason of the local authority having published conditions, “a local condition”, that local condition takes precedence.
- 11) If a condition of the pavement licence has been breached, the local authority may revoke the licence or may require steps to be taken to remedy the breach. The Authority may –
  - (1)
    - revoke the licence, or
    - serve a notice on the licence-holder requiring the taking of such steps to remedy the breach as are specified in the notice within such time as is specified.
  - (2) If a licence-holder on whom a notice is served under subsection (1)(b) fails to comply with the notice, the local authority may— (a) revoke the notice, or (b) take the steps itself and recover the costs of doing so from the licence holder. If the breach also impacted on the licensing objectives under the Licensing Act 2003 the Premises licence would be subject to a new Off Sales Summary Review procedure.
- 12) In addition, further grounds for revocation of the pavement licence including where the furniture is giving rise to risks to public health and safety or risks causing a public nuisance.
- 13) The pavement licence can also be revoked where the person did not put up a notice to publicise the application as required, or anything in the application was false or misleading.
- 14) Where a pavement licence is granted, or deemed to have been granted, any planning permission for anything done under the licence is deemed to have been granted.
- 15) Where a pavement licence is in effect, a street trading licence is not needed for any activity authorised by the pavement licence.
- 16) Local authorities retain their power under section 149 of the Highways Act to remove furniture placed on the highway should it constitute a nuisance or danger under that section.
- 17) Where a person has applied for a licence under the Highways Act 1980 or the London Local Authorities Act 1990 or another local Act and has paid a fee and then, before a decision is made on that first application, the person applies for a pavement licence, the local authority cannot charge a fee in respect of the application for a pavement licence, and the first application is treated as being withdrawn.

- 18) The Act also introduces Alcohol licensing changes that will allow operators with existing alcohol on-sales licences to be automatically authorised to sell alcohol for consumption off the premises (with some exceptions) and to make deliveries.
- 19) In exercising its functions the local authority must have regard to government Guidance.

### 5.3 National conditions imposed on all pavement licenses.

Section 5 of the Business and Planning Act 2020 specifies two national conditions. The National conditions which apply to pavement licences which are granted or deemed to be granted. These conditions are :

- a no obstruction condition and
- a smoke free seating condition.

- 5.4 A no obstruction condition is a condition that anything done by the licence holder pursuant to the licence, or any activity of other persons which is enabled by the licence, must not have an effect specified in section 3(6) of the Act.

Section 3 (6) states: The effects referred to in subsection (5) are –

- (a) Preventing traffic, other than vehicular traffic, from -
    - (i) Entering the relevant highway at a place where such traffic could otherwise enter it (ignoring any pedestrian planning order or traffic order made in relation to the highway),
    - (ii) Passing along the relevant highway, or
    - (iii) Having normal access to premises adjoining the relevant highway.
- A smoke free seating condition is a condition that, where the furniture to be put on the relevant highway consists of seating for use by persons for the purpose of consuming food or drink, the licence holder must make reasonable provisions for seating where smoking is not permitted.

### 5.5 Standard Conditions

Appendix A lists the proposed standard conditions prepared by the Council that will be attached to any licence granted to ensure that the pavement licence area and licence is appropriately managed by the licence holder. These include measures such as:

- Public health and safety - for example ensuring that uses conform with latest guidance on social distancing<sup>1</sup> and any reasonable crowd management measures needed
- Public amenity – to control nuisance to neighbouring occupiers by generating anti-social behaviour and litter; and
- Accessibility for pedestrians
- Requirement for public liability insurance
- Proof of right to occupy
- Risk assessments
- Damage to pavement to be made good by the licence holder

The full list of standard conditions attached as Appendix A, if approved, will be published on the Council's website.

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<sup>1</sup> The government has published the [COVID-19 Secure: safer public places guidance](#), which provides owners and operators of public spaces with information and examples of measures that may be undertaken to adapt and manage public spaces in order to help social distancing

- 5.6 Promotion of the availability of these licences will be communicated via the Council's website, business newsletters and social media campaign linked to the Covid updates for the safe use of the high streets publicity.
- 5.7 After 30 September 2021 unless the period is extended by the Secretary of State, if a business wishes to continue with their pavement licence then they will need to revert to making a new tables and chairs application under the existing regime (London Local Authorities Act 1990) in the usual way.
- 5.8 The Secretary of State has not issued any specific conditions at the time of publishing this report.
- 5.9 **New off sales provisions – only for alcohol licensed premises with on sales provision.**

Temporary changes to premises licensed for on sales under the Licensing Act 2003 have also been brought into effect, these are:

- The automatic right to off sales on premises that already holds an on sales ability is limited to 11pm cut off time.
- Any new permissions for off sales do not apply at times when the premises licence does not allow sales of alcohol for consumption in outdoor areas of the premises.

#### 5.10 **Appeal Process**

There is no prescribed appeal provision under this legislation. .

### 6. **Highways Comments**

- 6.1 We need to be clear about the requirements for more vulnerable users. Whilst a minimum footway width is of course a factor, particularly for blind or partially sighted users, it is more than that. Many of this group use the back of the footway as a guide. With potentially a significant number of new obstructions for them, like tables and chairs. We should be requiring the installation of an appropriate delineation to create this facility for them, rather than say chairs backing into the clear walking space creating a general hazard. Although it may vary depending what's being installed, in the example of tables and chairs this should be a barrier with appropriate tapping rail.
- 6.2 Whilst it's not likely to be practical to try and list all 'narrow' roads, particularly as individual roads are locally widened. We should specify a specific minimum remaining pavement distance for pedestrians, which realistically in light of the mobility inclusion would be difficult to argue could be less than 1.8m of space from the edge of the operation. Which should include if say businesses are putting up displays or stalls, space for people to actually use the facilities without standing within the clear passing space.
- 6.3 TfL have back funded work that identified 19 locations across the borough for immediate traffic management measures to increase the available space pedestrians and business having to social distance. Areas of the borough have been identified due to narrow pavement widths or noticeable pinch points that have limited pedestrian flow.
- 6.4 Haringey submitted a large number of semi-permanent footway widening bids to TfL covering a significant proportion of all retail areas in the borough. Once installed these are likely to last for a number of years with limited subsequent maintenance until the council chooses to remove them.



6.5 One of the main reason for applying for the funding was to have a flexible highways space to allow for activities like table and chairs. So these works undertaken will facilitate this process.

#### 6.6 **Enforcement**

Once granted, the Councils will have an enforcement role and will have the power to revoke licences in certain circumstances such as breach of condition or where:-

There are risks to public health or safety – for example by encouraging users to breach government guidance on social distancing by placing tables and chairs too close together;

- the highway is being obstructed (other than by anything permitted by the licence);
- there is anti-social behaviour or public nuisance – for example, the use is increasing the amount of noise generated late at night and litter is not being cleaned up;
- it comes to light that the applicant provided false or misleading statements in their application – for example they are operating a stall selling hot food and had applied for tables and chairs on which drinks could be consumed; or
- the applicant did not comply with the requirement to affix the notice to notify the public for the relevant period.

6.7 The local authority may also revoke the licence where all or any part of the area of the relevant highway to which the licence relates has become unsuitable for any purpose for which the licence was granted or deemed to be granted. For example, the licensed area (or road adjacent) is no longer to be pedestrianised.

6.8 The legislation provides that if an alcohol licence is in place for the premises, it is deemed to extend to the area of the pavement licence.

### 7. **Contribution to strategic outcomes**

7.1 **The Borough Plan 2019-23** sets out a four-year vision to make Haringey one of London's greatest boroughs where families can thrive and succeed. The Haringey Council Community Wealth Building approach will create an economy that is rooted in the community.

7.2 **Priority-2 People** - Our vision is a Haringey where strong families, strong networks and strong communities nurture all residents to live well and achieve their potential. The ability to apply conditions will provide safeguards to members of the community with disabilities and sight impairment. It will also ensure safe use of the streets for pedestrians

7.3 **Policy 3 – Place** - Our vision is for a place with strong, resilient and connected communities where people can lead active and healthy lives in an environment that is safe, clean and green. As the borough continues to grow, becomes better connected and continues to be a destination for many Londoners, we will need to ensure Haringey remains a safe and pleasant environment for all. We want to work with partners and the local community to achieve this and to define and shape how the borough looks and feels, both now and in the future. The Act is designed to build a sense of Al fresco dining and on street activity across the borough to make town centres vibrant.

7.4 **Policy 4 – Economy** - Our vision is for a growing economy that provides opportunities for all our residents and supports our businesses to thrive We want to build the strength, depth and wealth of our local economy and will create safe and attractive environments for both businesses and our residents to thrive. We will make sure that investment and

development has the interests of our communities at its heart and is undertaken for the benefit of our local residents and businesses. Haringey offers a lot of opportunity for new businesses and the relaxed measures brought in by the Act will provide financial support for businesses as they start to operate again out of the lockdown.

7.5 The above Priorities and objectives are underpinned by a number of cross – cutting principles namely:

- Prevention and early intervention – preventing poor outcomes for young people and intervening early when help and support is needed.
- A fair and equal borough – tackling the barriers facing the most disadvantaged and enabling them to reach their potential;
- Working together with our communities – building resilient communities where people are able to help themselves and support each other.
- Value for Money – achieving the best outcome from the investment made;
- Customer focus – placing our customers’ needs at the centre of what we do;
- Working in partnership – delivering with and through others.

## **8 Statutory Officers comments (Chief Finance Officer (including procurement), Assistant Director of Corporate Governance, Equalities)**

### **8.1 Finance**

This report seeks the Leader’s approval for the new pavement licenses to be adopted in Haringey in line with government response to encourage local businesses to start trading again whilst complying with social distancing requirements.

The maximum cost of these licenses is £100 per license and the application process will be accelerated to encourage businesses to apply in the most effective way.

The current street trading income generated is £105k however due to the opportunity of existing businesses surrendering their current license and taking out the new pavement licence this could lead to a potential loss of income in the region of £97k, this will be reported through the monthly revenue monitoring return by the service.

Furthermore, additional staff resources may be necessary due to the level of applicants and the short turnaround time in processing the new licence applications.

This new process introduces a streamlined and cheaper route for businesses such as cafes, restaurants and bars to secure a licence to place furniture on the highway. This will support them to operate safely while social distancing measures remain in place. This will provide much needed income for these businesses over the summer months and protect as many hospitality jobs as possible.

### **8.2 Procurement**

N/A

### **8.3 Legal**

Assistant Director of Corporate Governance has been consulted in the preparation of this report and advises that apart from those set out below the legal implications are set out in the body of the report.

Once a licence pavement licence is granted, or deemed to be granted, the applicant will also benefit from deemed planning permission to use the land for anything done pursuant to the licence while the licence is valid.



**9.3** The Council will need to consider the following when determining applications for Pavement Licences:

- public health and safety – for example, ensuring that uses conform with latest guidance on social distancing and any reasonable crowd management measures needed as a result of a licence being granted and businesses reopening;
- public amenity – will the proposed use create nuisance to neighbouring occupiers by generating anti-social behaviour and litter; and
- accessibility – taking a proportionate approach to considering the nature of the site in relation to which the application for a licence is made, its surroundings and its users, taking account of:
  - any other temporary measures in place that may be relevant to the proposal, for example, the reallocation of road space. This could include pedestrianised streets and any subsequent reallocation of this space to vehicles;
  - whether there are other permanent street furniture or structures in place on the footway that already reduce access;
  - the recommended minimum footway widths and distances required for access by mobility impaired and visually impaired people as set out in Section 3.1 of [Inclusive Mobility](#), and
  - other users of the space, for example if there are high levels of pedestrian or cycle movements.

The proposed conditions have taken these factors into account.

**9.4** The new process for issuing Pavement Licences is temporary and is not intended to permanently replace existing powers under the Highways Act 1980 or the London Local Authorities Act 1990 but sit alongside them.

**9.5** Section 8 of the Act amends Schedule 1, Paragraph B of the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (as amended) (“the Regulations”) to make pavement licences a non-executive function. Pursuant to Part Three, Section B, Section 2, Subsection 7(2)(a) of the constitution, the terms of reference of the Regulatory Committee includes exercising functions in Schedule 1, Paragraph B of the Regulations. It therefore falls to the Regulatory Committee to approve the published conditions subject to which the Council’s Pavement licences will be granted and to set the application fee.

## **10. Equality**

**10.1** The Council has a Public Sector Equality Duty under the Equality Act (2010) to have due regard to the need to:

- Eliminate discrimination, harassment and victimisation and any other conduct prohibited under the Act
- Advance equality of opportunity between people who share those protected characteristics and people who do not
- Foster good relations between people who share those characteristics and people who do not.

The three parts of the duty applies to the following protected characteristics: age, disability, gender reassignment, pregnancy/maternity, race, religion/faith, sex and sexual orientation. Marriage and civil partnership status applies to the first part of the duty. An equalities screening has been undertaken and identified people with disabilities and

sight impairment are likely to be affected by this legislation. However, the conditions the Council is seeking to adopt will alleviate some of the concerns.

The EQiA has identified that people with a disability and sight impairment may be affected by this process, but the mitigation has been put in place by the Government with the no obstruction mandatory condition and Haringey's own conditions and safeguards to consider the safe pedestrian access to pavement for people from the affected group. The EQiA is at Appendix B.

**9. Use of Appendices**

**Appendix A Pavement Licensing draft conditions**  
**Appendix B EQiA**

**10. Local Government (Access to Information) Act 1985**

The Business and Planning Act 2020

The MHCLG Guidance is published - July 2020