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London Borough of Enfield

Portfolio Report

Report of: Sue McDaid

Subject: Introduction of Pavement Licences

Cabinet Member: Cllr George Savva

Executive Director: Sarah Cary

Ward: All

Key Decision: **KD – rule 15 urgency sought**

Purpose of Report

1. To set the fee and licence duration for pavement licences introduced by the Business and Planning Act 2020. The Act introduces a 'pavement licence' to place removeable furniture (ie stalls, tables and chairs and ancillaries such as barriers) on the highway to sell or serve food and drink including of alcohol. The purpose is to support businesses in their recovery following the lockdown period.
2. Despite many hospitality premises being allowed to open from 4 July, the Act is still going through parliament and will not come into force before at least 20 July 2020. It is therefore recommended that until the new Act comes into force that temporary street trading licences are issued under the existing London Local Authorities Act 1990 to permit tables and chairs with a licence fee of £100.

Proposal(s)

The proposals are:

3. Until such time as the Business and Planning Act 2020 comes into force, tables and chairs licences will be issued as temporary street trading licences under the under the existing London Local Authorities Act 1990 with a fee set at £100. The period to determine the licence application will be the same as the Business and Planning Act 2020 (14 calendar days) and licences run to 30 September 2021 with the same standard licence conditions as per Appendix A.

4. Approve the licence application fee of £100 (maximum permitted in the Act) for pavement licences under the Business and Planning Act 2020.
5. Agree that pavement licences under the Business and Planning Act 2020 will usually be issued up to 30 September 2021 (the maximum time period allowed in the Act), unless due to representations or otherwise a shorter period is considered more appropriate.

Reason for Proposal

6. The Act comes into force after 20 July 2020, but provision is made under the existing legislation on the same terms of the Act to allow tables and chairs licences before this. This is so that business can secure these licences in time for the summer. The purpose of these time limited pavement licences is to support businesses to recover following Covid lockdown allowing customers to be seated inside and outside of the premises to consume food and drink, and also to ensure our high streets become more vibrant and welcoming places for our residents to visit.

Relevance to the Council's Corporate Plan

7. Pavement licences help support businesses during the current Coronavirus pandemic, as part of a wider package of funding and support to deliver the council's wider goals, as set out in the Corporate Plan to support businesses.

Background

8. One of the provisions of the Act is that the pavement licence supersedes tables and chairs licensing under the Local Authorities Act 1990 for the period of this new Act (ie up to 30 September 2021). This means that any tables and chairs licences will have to be issued under this Act once in force rather than under the usual Local Authorities Act 1990. Many of the provisions are very similar to the process of street trading licensing under the Local Authorities Act 1990
9. A brief summary of the Bill's provisions as it currently stands are:
 - A maximum licence fee of up to £100 (capped)
 - The duration of a pavement licence to be determined by the Council for any period up to 30 September 2021, but not less than 3 months
 - Licence applications will be subject to a consultation with stakeholders, including a requirement on businesses to display a notice of the application so that members of the public as well as the Police and Highways may make representations
 - Highways will assess the applications to ensure that the tables and chairs can be safely accommodated on the area of pavement applied for; taking into account the need for social distancing, safe passage of pedestrians including those with disability

- Specifies a maximum 14 day ‘turnaround time’ between submitting the application until granted or refused (7 calendar days must be allowed for consultation and then the Council must grant or refuse the licence within a maximum of 7 calendar days from when the consultation ends). If the licence is not determined within this time period, it is deemed granted for a period of one year from the day after the 14 days
 - Where a business has a licence to serve alcohol on the premises, temporary amendments to the Licensing Act 2003 will allow them to sell alcohol for consumption off the premises within the licensed tables and chairs area without needing to apply for a variation of their licence
 - A pavement licence constitutes deemed planning permission and so planning consent is not required
 - If the licence is breached, the Council can serve a remediation notice and undertake those remedies and recover costs of doing so, or revoke the licence
 - The Council can also revoke the licence for other reasons. For example, if it believes that the highway is no longer suitable, that there is a public safety or health risk (eg tables and chairs placed too close together so do not allow social distancing), that ASB or nuisance is being caused or there is a risk it will be or that the highway is being obstructed.
10. The Council is required to consult with Highway Services and must also consult with other stakeholders it considers appropriate. We intend to also consult with noise officers (regarding nuisance), licensing officers and with the Police.
11. Sections 5(4) and 3(6) of the Business and Planning Act specifies a statutory ‘no obstruction’ condition. The Secretary of State may publish conditions for pavement licences, and has only published one condition to date relating to clear routes of access as follows:
- 12. It is a condition that clear routes of access along the highway must be 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 people as set out in Section 3.1 of Inclusive Mobility.*
13. Appendix A lists the proposed standard conditions prepared by the Council that will be attached to 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 distancing¹ and any reasonable crowd management measures needed
 - Public amenity – to control nuisance to neighbouring occupiers by generating anti-social behaviour and litter; and
 - Accessibility

¹ 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

14. The standard conditions (Appendix A) , if approved, will be published on the Council's website.
15. Promotion of the availability of these licences will be communicated via the Council's website, business newsletters and social media campaign linked to the safe and successful high streets publicity campaign.
16. After 30 September 2021, 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.

Main Considerations for the Council

17. This feeds into a wider piece of work to support businesses and high streets during Covid recovery led by the Recovery Group and Economic development.

18. The main considerations are:

- **At what level to set the fee:**

The maximum allowed in the Act is £100. This does not cover the Council's cost of processing and enforcing a pavement licence, but the fee is capped in the Act at £100. It is recommended that the licence fee is set at the maximum of £100.

- **Duration of the licences:**

The Act permits the Council to determine the duration of the licences for any time period up to 30 September 2021. The expectation is that local authorities will grant licences for 12 months or more unless there are good reasons for granting a licence for a shorter period such as plans for future changes in use of road space.

In order to provide certainty to businesses in investing in tables and chairs, it is recommended that the licence duration is generally set to 30 September 2021. However, if on receipt of an objection to the application, or otherwise, licensing officers should have ability to issue a licence of shorter duration if justified.

- **Licence conditions:**

Appendix A lists the standard conditions that will be apply to pavement licences that are granted. However, it is recommended that the licensing officers have the ability to also include additional conditions if required to reflect specific controls required.

- **Whether to allow 'appeals' against refusal or revocation of licences:**

There is no statutory appeal process for refusal or revocation of pavement licences. Guidance states that Councils may wish to consider the scope for an internal review process, for example permitting 'appeals' to their Licensing sub-committee. It is recommended that where licences are refused or revoked that applicants can ask for an internal review by the Licensing sub-committee.

- **What footway width should be retained:**

There is a recommendation that the footway minimum widths are as set out in Section 3.1 of [Inclusive Mobility](#). It is proposed that Enfield adopts a minimum footway width of 2.0m under normal circumstances to grant a pavement licence. However, where this is not possible, an absolute minimum width of 1.5m will be permitted which would allow the passage of a wheelchair user and pedestrian to pass each other.

Where existing cycleways are present these will temporarily become a shared use facility for both pedestrians and cyclists. Temporary signs will need to be erected at the start of the facility to inform the general public of this change of use. It is proposed that where the first pavement licence along this footway is provided, a repeater sign informing the public of the shared use.

- **Enforcement of unlicensed tables and chairs**

The Council will support businesses recover following lockdown by facilitating tables and chairs licences as soon as possible. The Council will not take enforcement action if tables and chairs are placed on the pavement pending a decision on an application that has been submitted, provided the tables and chairs do not cause a safety issue or cause obstruction.

If tables and chairs are placed on the pavement and no application has been made, the Council will invite an application for a licence and give a 'grace period' for receipt of the application. If an application is not received during this grace period, then enforcement action will be taken to secure removal of the unlicensed tables and chairs from the pavement.

If a licence application is refused the tables and chairs must immediately be removed from the pavement.

Safeguarding Implications

19. No direct safeguarding implications.

Public Health Implications

20. There is a risk of that occupation of the public highway by tables and chairs may adversely affect the ability of persons to maintain current social distancing guidelines as advised by Government.

21. All licences will be issued with standard conditions requiring them to adhere to current Government advice on social distancing. There is no specific reference to a set distances (2m or 1m) so as to accommodate changes Government may make in the future.

Equalities Impact of the Proposal

22. There are no predicted negative impact any protected group. Businesses are operated by individuals from a variety of ethnic groups and ages and often provide essential services and employment opportunities for the local community. For this reason, it is likely that this approach to pavement licences will have a positive impact from an equality perspective. However, before granting any pavement licence the Council needs to ensure that there is sufficient pavement width to allow for pedestrians and mobility scooters and pushchairs to pass safely beside the licensed area.

Environmental and Climate Change Considerations

23. There are no direct climate change implications for these proposals. In terms of environmental impact, licence holders will be required to keep the pavement used clean and clear of litter/rubbish and to ensure that tables and chairs and furniture are removed from the pavement by 11pm to prevent noise nuisance to nearby residential properties.

Risks that may arise if the proposed decision and related work is not taken

24. Businesses have expressed interest in temporary street trading to enable them to place tables and chairs on the pavement. The Government also wrote to Councils on 18 June urging them to support businesses to obtain these licences, cutting fees for businesses and accelerating decisions.

Risks that may arise if the proposed decision is taken and actions that will be taken to manage these risks

25. There is a potential conflict in the use of pavements for pavement licences and queuing for social distancing purposes. The business making the application will need to show in their application how they will comply with social distancing requirements with queues and the use of tables and chairs. Highways officers will also assess this aspect during their site visit to ensure that there is sufficient pavement width and no obstruction to pavement users, especially users with mobility/disability needs.

Financial Implications

26. The £100 fee does not cover the Council's cost of processing and enforcing a pavement licence, but the fee is capped in the Act at £100. Therefore, any budgetary shortfalls that might arise from this proposal will be met from the existing Regulatory Services budgets.

Legal Implications

27. The current Business and Planning Bill 2020 when enacted will give local authorities the power to issue 'pavement licences' for a fee, capped at £100, which will be valid until a maximum of 30 September 2021. The Bill also proposes to temporarily disengage certain sections of current legislation, see section 7 quoted in full below.

Effects

Section 7

A pavement licence authorises the restriction, by anything done by the licenceholder pursuant to the licence, of public access to the part of the relevant highway to which the licence relates.

(2) A pavement licence constitutes deemed planning permission for anything done by the licence-holder pursuant to the licence—

which is development requiring planning permission under Part 3 of the Town and Country Planning Act 1990, and

(b) for which there would otherwise not be planning permission or deemed planning permission.

(3) Anything done by the licence-holder pursuant to a pavement licence is not street trading for the purposes of—

Schedule 4 to the Local Government (Miscellaneous Provisions) Act 1982 (street trading),

(b) Part 3 of the London Local Authorities Act 1990 (street trading), or

(c) any other enactment under or by virtue of which street trading without a licence or other form of permission is unlawful.

(4) Nothing in this group of sections prevents a person from applying for permission under Part 7A of the Highways Act 1980 or any other enactment to do anything which could be done by a licence-holder pursuant to a pavement licence (but a local authority may not require a person to apply for such permission rather than a pavement licence).

(5) Where a pavement licence has been granted or deemed to be granted to a person, permission subsequently granted to the person under Part 7A of the Highways Act 1980 or any other enactment to do anything which could be done by the person pursuant to the pavement licence has no effect while the pavement licence continues in force.

(6) Section 149 of the Highways Act 1980 (power to remove things deposited on a highway) applies in relation to anything put on a relevant highway pursuant to a pavement licence.

(7) Section 333 of the Highways Act 1980 (saving for rights and liabilities as to interference with highways) applies as if sections 1 to 6 were provisions of that Act.

(8) In section 249 of the Town and Country Planning Act 1990 (order extinguishing right to use vehicles on highway), subsection (7) has effect as if at the end there were inserted "or sections 1 to 9 of the Business and Planning Act 2020".

(9) Subsection (10) applies where—

a person has applied to a local authority for—

permission under section 115E of the Highways Act 1980, or

(ii) a licence or other form of permission for street trading under an enactment referred to in subsection (3), but

(b) before the application is determined, the person applies for a pavement licence.

(10) Where this subsection applies—
the application referred to in subsection (9)(a) is treated as withdrawn,
and
(b) if the person has paid any fee payable in connection with that
application, the local authority to which the pavement licence
application is made may not require a fee under section 2(1)(c).

Workforce Implications

28. These pavement licences will be processed, assessed and issued using existing resources and officer diverted to prioritise this work if needed.

Property Implications

29. None

Other Implications

30. No further implications.

Options Considered

31. There are no alternative options. The Act allows businesses to apply for pavement licences which must be accepted and determined by the Council.

Conclusions

32. It is recommended that the pavement licence fee under the Business and Planning Act 2020 be set at the maximum permitted of £100 for a period up to 30 September 2021, unless considered appropriate to issue the licence for a shorter duration. Until such time as the Business and Planning Act 2020 is in force, tables and chairs licences will be issued under the existing legislation (London Local Authorities Act 1990) and a £100 fee charged and the licence conditions in Appendix A.

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Appendices

Appendix A – Standard licence conditions for pavement licences

Background Papers

The following documents have been relied on in the preparation of this report:

Letter from MHCLG 18 June 2020 regarding helping hospitality businesses