

URGENT DELEGATED DECISION

Date: 21 July 2020

Request to the Head of Paid Service to exercise delegated authority as per Responsibility of Functions in Part IV, page 28 of the Constitution.

“to determine any matter within the referred or delegated powers and duties of a committee / sub committee / board / working which is so urgent that a decision must be made before the next meeting of that committee / sub-committee / board / working group is due to be held.”

Limits on delegation: -

- Before making a decision using this delegated power, The Head of Paid Service shall consult with and take cognisance of the views of the Chairman (or in his absence the VC) of the relevant Committee / Sub-Committee etc; and
- Any decision taken by the Head of Paid Service under this delegated power shall be reported to Members within five working days of the decision taken.
- During the COVID-19 Pandemic we have also committed to consult with the Leader of the Opposition on such decisions. *

*On this occasion, this was undertaken by way of separate telephone briefing due to availability.

Usual Decision Maker: -

This decision would have been taken by Full Council initially before being delegated to the Licensing Committee.

This decision needs to be made and implementation commence, before either body is due to meet.

The decision is in response to changing Governance guidance and announcements relating to the easing of lockdown measures and economic recovery phases

Call-in does not apply.

Background

The background to this decision is as detailed in the report titled **“Business and Planning Bill 2019 – Pavement Licences”** which is appended to this decision.

Reason for Urgency and Rationale for use of urgent Delegated Decision

In light of the current COVID 19 situation, and in response to changing Governance announcements and packages to support business affected by the COVID-19 Lockdown measures.

On 25 June 2020 the Business and Planning Bill 2019-21 was introduced to the House of Commons by the Government and given its First Reading. The Bill is expected to speed through Parliament and is due for its report stage to be heard on the 20th July. After this, the 3rd reading will be scheduled and from there it will proceed to obtain Royal assent.

Currently, Lincolnshire County Council (LCC) under the Highways Act 1980 determines pavement licences (also known as “street café licences” and tables and chairs licences which allow businesses such as cafes, restaurants and bars to place furniture on the highway.

The New Bill introduces a streamlined route for businesses to secure a licence to place furniture on the highway and bypasses the existing regulatory regime. The government intends that this will support businesses to operate safely while Covid-19 social distancing measures remain in place and provide income for those businesses. The new Bill places the responsibility for issuing the licences on district councils, in consultation with the highways authority and other relevant persons, until 30 September 2021.

The Bill is expected to become law imminently, with an immediate implementation once enacted. Up until this point the issuing of licenses remains with LCC. These licenses would be a new function for the Council, which is not currently in place and would require processes, procedures, systems and training to be developed and put in place within a matter of days.

The County Council has offered the option to all District Councils, advising that they would be prepared to take on the processing of these licences subject to District Council's delegating the pavement licence function, under the Business and Planning Bill to the County Council.

They would in turn be able to adapt their current licencing scheme to ensure compliance with the new legislation.

The full rationale for the decision, is contained within the report which is appended.

Financial Detail and Implications

Fin Ref: - DD/6/21/SL

Full financial details and implications are contained within the appended report.

Notes of Consultation Relevant to the Decision

There was some concern from the Chair of Licensing regarding the delegation of this function as she considered this was a District Council power and therefore the District Council should retain control of the function. She considered staff would have the ability to

administer this function fairly rapidly, as she did not expect the uptake to be great. Furthermore, the District Council should retain any fees payable. There was also concerns that the District Council would be left to enforce issues arising from inappropriate licensing

In response and by way of reassurance Officers raised the following points: -

The County Council had indicated they would undertake this service free of charge to the customer and the Council. The District Council was not a position to make a similar offer. The maximum fee which could be levied under the new Bill would be £100, previously the fee was between £500-700. Whilst it had not been fully costed it was anticipated to administer the scheme from scratch, as all District Councils would have to do, would cost more in set up than any income generated. No new applications for the District had been received to date.

All District Councils with the exception of Lincoln City had indicated their, subject to formal decision, agreement to the County's proposal.

Furthermore, all street pavement licences, would be enforced by the County Council. The existence of a premises licence would not be effected and this would remain with the District Council to enforce.

It was also worth noting that if applications were not dealt with within 7 days, they would be granted by default. Having systems in place and staff already trained would hopefully ensure there were no such de-faults granted.

Due to the concerns and comments it was agreed to bring forward the review report from March 2020 to December 2020 and furthermore the report should include proposals as to how feasible it would be to return to the function in-house.

Decision

In light of the comments raised through the consultation the following decision has been taken: -

- (a) The Districts Council's function in relation to "Pavement Licenses" under the Business and Planning Bill 2019 be delegated to Lincolnshire County Council up until the 30th September 2021.**
- (b) The final sign off of the operational documentation in relation to this decision be subject to a further delegated decision by the Chief Executive following Consultation with the Chairman of the Licensing Committee.**
- (c) An update on the position in relation to these delegations and how they are functioning be submitted to the Licensing Committee by the end of the current calendar year (Dec 2020) including proposals as to how the function could be brought back in-house.**



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Ian Knowles
Head of Paid Service

As the Chairman of the Corporate Policy and Resources Committee I have been fully consulted on this matter



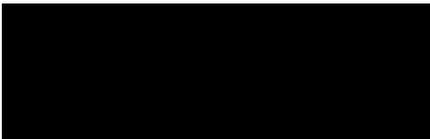
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Leader of the Council

As the Chairman of the Prosperous Communities Committee I have been fully consulted on this matter



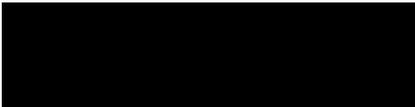
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Chairman of the Prosperous Communities Committee

As the Chairman of the Licensing Committee I have been fully consulted on this matter



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Chairman of the Licensing Committee

As the Leader of the Opposition whilst not present at the meeting I was fully consulted on this matter via telephone briefing



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Leader of the Opposition.

Date all Members were notified of the decision: 24 July 2020



**Urgent head of paid service
delegated decision**

21st July 2020

Subject: Business and Planning Bill 2019 – Pavement Licences

Report by:

Chief Executive

Contact Officer:

Andy Gray
Housing and Enforcement Manager

andy.gray@west-lindsey.gov.uk

Purpose / Summary:

To seek approval to delegate the Councils function under this bill in relation to pavement licenses to Lincolnshire County Council

RECOMMENDATION(S):

It is recommended that;

- 1.1 The Districts Council's function in relation to "Pavement Licenses" under the Business and Planning Bill 2019 is delegated to Lincolnshire County Council up until the 30th September 2021.
- 1.2 The final sign off of the operational documentation in relation to this delegation is delegated to the Chief Executive in conjunction with the Chair of the Licensing Committee.
- 1.3 An update on the position in relation to these delegations and how they are functioning is provided to the Licensing Committee by the end of the current financial year.

IMPLICATIONS

Legal:

The Business and Planning Bill has not yet passed into legislation and there is still the possibility that it may be amended, however, the Council should prepare for the Act to be implemented in its current form.

The Council may delegate executive functions to other local authorities or under joint arrangements, subject to access to information rules.

It is possible for any delegation of functions to another authority to be rescinded at a later date.

Financial : DD/6/21/SL

Lincolnshire County Council has indicated that there would be no cost to the Council in delegating authority to them to deliver the function.

If the Council chose not to delegate authority and administer the function itself, there would be staffing costs associated with setting up and administering the function. The volume of applications is unknown and may result in additional staffing resource being required to process them within the statutory timescale. Therefore, it is not possible to quantify the financial implications at this time if this option was taken forward but it is suggested that the resource implication is one factor that will be taken into consideration when determining the preferred solution.

Staffing :

(N.B.) Where there are staffing implications the report MUST have a HR Ref

Equality and Diversity including Human Rights :

No equality implications have been identified as this report relates to the implementation of legislation, which concerns the licensing of businesses. However, the Bill makes provision for a mandatory national licence condition which will 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 people.

Data Protection Implications :

Climate Related Risks and Opportunities:

Section 17 Crime and Disorder Considerations:

The approval of pavement licences with appropriate local conditions provides a framework for enforcement (remediation notices and revocation provisions) should poor behaviour associated with the licence be experienced.

Health Implications:

Title and Location of any Background Papers used in the preparation of this report :

[The Business and Planning Bill 2019-2021](#)

[Government draft guidance: pavement licences \(outdoor seating proposal\)](#)

Risk Assessment :

2 Background

- 2.1 On 25 June 2020 the Business and Planning Bill 2019-21 was introduced to the House of Commons by the Government and given its First Reading. The Bill is expected to speed through Parliament and is due for its report stage to be heard on the 20th July. After this, the 3rd reading will be scheduled and from there it will proceed to obtain Royal assent.
- 2.2 Currently, pavement licences (also known as “street café licences” and “tables and chairs licences”) which allow businesses such as cafes, restaurants and bars to place furniture on the highway are determined by Lincolnshire County Council (LCC) under the Highways Act 1980.
- 2.3 The Bill introduces a streamlined route for businesses to secure a licence to place furniture on the highway and bypasses the existing regulatory regime. The government intends that this will support businesses to operate safely while Covid-19 social distancing measures remain in place and provide income for those businesses. The new Bill places the responsibility for issuing the licences on district councils, in consultation with the highways authority and other relevant persons, until 30 September 2021.
- 2.4 The Bill also significantly reduces the charge for a licence to be issued to £100 and reduces the consultation period to 7 days. Alongside this it introduces an assumption of approval if the application is not dealt with inside the revised timescales.
- 2.5 The Bill is expected to become law imminently, with an immediate implementation once enacted. Up to this point the issuing of licenses remains with LCC. These licenses would be a new function for the Council, which is not currently in place and will require processes, procedures, systems and training to be developed and put in place within a matter of days.
- 2.6 As such LCC has offered the option to all District Councils, advising that they would be prepared to take on the processing of these licences. If the Council so wishes, it could delegate the pavement licensing function under the Business and Planning Bill to the County Council, who would be able to adapt their current licencing scheme to ensure compliance with the new legislation.
- 2.7 LCC already have provision to do this within their existing regime and as of the 17th of July all Districts, with the exception of the City of Lincoln have taken steps to progress the delegation to LCC.
- 2.8 To provide context, there are currently three of these licenses in operation within the District.

3 Proposal

- 3.1 The offer from LCC will include the following:
 - Use of LCC website as first point of contact, make available application form, terms and conditions & updated guidance

- Single e mail contact
 - Confirm suitability (within the new relaxed legislation) using info from application form
 - Post Notice via LCC website
 - Check liability insurance
 - Carry out consultation with stakeholders (including District Councils and Police)
 - Review any objections
 - Grant licences
 - Enforce if licence terms are broken
 - Keeping of records
- 3.2 LCC have confirmed that there will be no charge for the service to the Districts or to the businesses, who will have applications processed free of charge.
- 3.3 At this stage there is no formal written documentation to support the operational aspects of the delegation, however this will be obtained prior to the commencement of the new powers.
- 3.4 Alongside this the District Council will reserve the right to reverse this delegation or amend it as it sees fit during the period of time it is in place. It is proposed that the arrangement would be monitored within the existing Licensing work area.
- 3.5 A draft copy of the licence that will be issued as part of this process is shown in appendix 1. Other relevant information can be found here <https://www.lincolnshire.gov.uk/licences-permits/apply-street-cafe-stall-licence>

4 Alternative Options

- 4.1 The Council could choose to administer this function itself. The new streamlined process detailed in the Bill means that applications are subject to 7 days of consultation and then a decision has to be taken within a further 7 days, otherwise the licence is deemed to have been granted for a year (or less, up to 30 September 2021).
- 4.2 As this would be a new function for the Council there are currently no processes in place, limited knowledge or experience of this function and limited staff capacity to take it on.
- 4.3 If this was not in place by implementation there is a risk of deemed licences as a result of non-determination. Given the timescales, the Council is likely to only be able to put in place a fairly basic online process that focussed on meeting the minimum statutory obligations.

5 Recommendation

It is recommended that;

- 5.1 The Districts Council's function in relation to "Pavement Licenses" under the Business and Planning Bill 2019 is delegated to Lincolnshire County Council up until the 30th September 2021.
- 5.2 The final sign off of the operational documentation in relation to this delegation is delegated to the Chief Executive in conjunction with the Chair of the Licensing Committee.
- 5.3 An update on the position in relation these delegations and how they are functioning is provided to the Licensing Committee by the end of the current financial year.

Appendix 1

LINCOLNSHIRE COUNTY COUNCIL

PERMISSION FOR REFRESHMENT FACILITIES AND STALLS ON THE HIGHWAY

(TOWN & STREET)

- (1) **LINCOLNSHIRE COUNTY COUNCIL** of County Offices, Newland, Lincoln, Lincolnshire. LN1 1YL ('the Council')
- (2) **name of person of name of business** ('the Licensee')

Definitions

- 'the Designated Area' means the area permitted to be used under this permission as described in Schedule 1 and as shown on the attached plan
- 'the Furniture' means the items described in Schedule 2
- 'the Premises' means the Licensee's business trading as name of business at address
- 'the Proper Officer' means the Executive Director for the time being appointed or his duly authorised representative

In accordance with the Highways Act 1980 section 115E (1) (a) and (b) the Council grants permission to the Licensee to use Designated Area for the provision of refreshments subject to the following conditions;-

1. This Permission is personal to the Licensee.
2. The permitted hours of operation are set out in Schedule 3 to this Licence.
3. The Designated Area will not extend beyond the approved limits.
4. The Furniture shall be safe and suitable for the purpose, clean and tidy and maintained to a high standard at the Licensee's expense.
5. The boundaries of the Designated Area must be provided with a means of enclosure approved by the Council and described in the Schedule.
6. The Furniture must be kept within the Designated Area at all times it is in use and must not project beyond the Designated Area.
7. The Licensee shall make no permanent or temporary fixtures or excavations of any kind in the surface of the highway which shall be left undisturbed when the Furniture is not in use.
8. The Licensee shall make no claim or charge against the Council in the event of the Furniture being lost stolen or damaged in any way from whatever cause.
9. The Licensee shall indemnify the Council against all actions, proceedings, costs claims demands and liabilities whatsoever which may at any time be taken made or incurred in consequence of the use of the Furniture on the highway and for this purpose must take out at his own expense appropriate third party insurance cover approved by the Council in a sum not less than £5 million and produce to the Council on request the current receipt for premium and confirmation of annual renewal of the policy.

10. The Designated Area must only be used solely for the purpose of consumption of refreshments or the display of goods.
11. Tables are to be cleared as soon as possible after customers have left.
12. The Licensee shall provide litter bins or similar receptacles for the deposit of cartons, wrappers, containers and similar discarded items and ensure that the same are emptied as frequently as necessary or at least daily.
13. Waste from the Licensee's operations must not be disposed of in the permanent litter bins provided by the Council.
14. The Licensee shall keep the Designated Area in a clean and tidy condition during the permitted hours and shall leave the Designated Area clean and tidy and unobstructed at the end of each daily period of use and on revocation or surrender of this Permission.
15. The Licensee shall remove all Furniture and litter bins or other articles placed on the highway in accordance with this Permission at the end of each daily period of use and at the expiry, surrender or revocation of this Permission.
16. The Licensee must as soon as practicable sweep the Designated Area and wash down or remove any stains from spills of food or liquid and in default the Council will undertake this and recharge the Licensee.
17. The Licensee shall not cause any unnecessary obstruction of the highways or danger to persons using it and shall not permit persons to gather so as to cause a nuisance or annoyance or danger to persons lawfully using the highway.
18. The Licensee shall ensure that a copy of this Permission is at all times on prominent display at the Premises.
19. The Licensee shall ensure that adequate supervision is provided over the Designated Area during the times of operation in order to comply fully with these conditions.
20. The Licensee shall not use the highway for any purpose whatsoever at any time other than during permitted hours, other than lawfully passing and re-passing there over as members(s) of the public.
21. No alcohol shall be sold or consumed within the Designated Area unless in compliance with any Licence issued by the relevant Licensing Authority.
22. No amplified music shall be played on any apparatus within the Designated Area or within the premises so as to be audible outside the Designated Area.
23. The Licensee shall not assign underlet or part with any interest or possession given by this permission or any part thereof but the Licensee may surrender it at any time.
24. The Licensee shall observe and comply with any directions in relation to the use of the highway given by the Proper Officer, or a police officer.
25. The Licensee shall suspend operation of any permission granted at the request of the Proper Officer to enable any street works to be carried out on or near the permitted location.
26. Nothing herein contained shall be construed as granting or purporting to grant by the Council any tenancy under the Landlord and Tenant Act 1954 or any permission under the Town and Country Planning Act 1990 or any statutory modification or re-enactment for the time being in force.

27. This Permission shall tenure for a period of one year and shall expire on **30 SEPTEMBER 2021** notwithstanding any revocation in accordance with any conditions of this Permission.
28. This Permission is granted under section 115E of the Highways Act 1980 and the Licensee shall comply with and obtain all other necessary statutory consents and approvals required in connection with the exercise of a refreshment facility on the highway and comply with the provisions of all such consents and approvals and all statutes and other obligations imposed by law with regards to the provision, maintenance and operation of the refreshment facility.
29. **NON- COMPLIANCE with any condition of this permission resulting in any complaint to the Council or the police will render the Licensee liable to a written Notice under section 115K of the Highways Act 1980 and failure to comply with such a Notice immediately AND ANY SUBSEQUENT breach or non-compliance shall render the Licensee liable to a written Notice REVOKING this Permission forthwith.**
30. Notwithstanding the specific requirements in Condition 17 above, the Licensee shall not do or suffer anything to be done in or on the highway which in the opinion of the Proper Officer may be or become a danger, nuisance or annoyance to or cause damage or inconvenience to the Council or the owners or occupiers of any adjacent or neighbouring premises or to members of the public.
31. **This Permission may be revoked by the Council at any time and the Council shall not in any circumstances whatsoever be liable to pay any compensation or refund any fees to the Licensee in respect of such revocation.**
32. This permission may be terminated in writing by the Licensee at any time by giving 5 days' notice to the Council.

PLEASE NOTE:

- (a) The Council has the right to serve a notice requiring you to remedy breaches of any condition of the Permission and if you fail to respond the Council may take any necessary action and recover the cost from you. Serious or persistent breaches may result in the revocation of or refusal to renew the Permission.
- (b) Any obstruction of the highway which is not specifically authorised by this permission may render the Licensee liable to prosecution and open to claim for damages in the event of injury.
- (c) This permission does not allow for any vehicle to be situated within the confines of the pavement café enclosure.

SCHEDULE 1 – Designated Area

Designated Area
Means of Enclosure
Area to Measure

SCHEDULE 2 – The Furniture

<u>The Furniture</u>	
Tables	Parasols
Chairs	Litter Bins
Menu Boards	Planters
Stalls	

SCHEDULE 3 – Times of Operation

Times of Operation
Days of the Week
Between the Hours of

By signing this Permission below you are confirming you have read and understood all the conditions of this Permission and are agreeable to all the conditions of this Permission.

Signed by Licensee

Print Name

Date

Signed on behalf
of Lincolnshire

County Council
Print Name

Date