

Duration of a Pavement Licence

Licensing Committee Wednesday, 2 October 2024

Report of: Deputy Chief Executive

Purpose: For decision

Publication status: Unrestricted

Wards affected: All

Executive summary:

The Council is responsible for granting or refusing permission to businesses in respect of the placement of furniture such as tables and chairs on the highway (including footpaths and pavements). Permission can only be granted for premises selling or consuming food and drink in connection with the activity of the main premises. There is no specific restriction on what part of the highway can be licensed, provided it is adjacent to the existing business.

The temporary scheme brought into effect by the Business and Planning Act 2020 has now been made a permanent scheme under the Levelling Up and Regeneration Act 2023.

The Committee is requested to consider the contents of this report, The Levelling Up Act 2023 (LURA2023) and the revised Guidance issued by the Department for Levelling Up, Housing & Communities (DLUHC) issued on 2nd April 2024 and determine the duration of a Pavement Licence once granted up to a maximum of two years.

This report supports the Council's priority of: Protecting and enhancing our environment. A thriving economy.

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Recommendation to Committee:

- A) That the Committee considers the contents of this report, The Levelling Up Act 2023 (LURA2023) and the revised Guidance issued by the Department for Levelling Up, Housing & Communities (DLUHC) issued on 2nd April 2024.
- B) Authorise Officers to make amendments to the standard licence conditions in Appendix B to reflect the legislative changes required and apply a duration of two years for pavement licences.
- C) Note that when reviewing pavement licence applications Officers will ensure that businesses make reasonable provision for non-smokers to use outdoor seating space and that smoking and non-smoking areas are adequately separated.

Reason for recommendation:

The Levelling Up and Regeneration Act 2023 (LURA2023) made the provisions of the Business and Planning Act 2020 permanent with effect from 31st March 2024. Each licence previously issued under the temporary scheme had a fixed terminal date, currently set as 30th September 2024. Under the new permanent scheme, each local authority can determine the length of the licence they will grant.

Under Schedule 22 (LURA2023) attached as Appendix A to this report, Paragraph 8(2) states that a pavement licence may be granted by the local authority for such period as they specify in the licence. The period specified may not exceed two years.

Introduction and background

- 1.1 The Business and Planning Act 2020 ('2020 Act') introduced a fast-track process for businesses to obtain a temporary pavement licence for the placement of furniture such as tables and chairs on the highway (including footpaths and pavements) adjacent to that premises for the purpose of selling or consuming food and/or drink.
- 1.2 Under this legislation it became the responsibility of each local authority to deliver the temporary pavement licence scheme as opposed to County Councils who previously had responsibility under Part VIIA Highways Act 1980.
- 1.3 The 2020 Act created a regime for processing applications for temporary pavement licences to authorise businesses such as cafes, restaurants and bars to place furniture on the highway.
- 1.4 It was designed to make it easier for premises serving food and drink to seat and serve customers outdoors, maximising their ability to trade,

assisting them to operate safely and promoting economic recovery in response to the impact of the global COVID-19 pandemic.

- 1.5 The scheme was of a temporary nature and although its provisions had been extended over the last couple of years, it remained a temporary scheme.
- 1.6 The Levelling Up and Regeneration Act 2023 (LURA2023) made the provisions of the Business and Planning Act 2020 permanent with effect from 31st March 2024. The responsibility for the scheme remains with each Borough/District Council and has not reverted to the County Council.
- 1.7 Each licence previously issued under the temporary scheme had a fixed terminal date, currently set as 30th September 2024. Under the new permanent scheme, each local authority can determine the length of the licence they will grant.
- 1.8 Under Schedule 22 (LURA2023) attached as Appendix A to this report, Paragraph 8(2) states that a pavement licence may be granted by the local authority for such period as they specify in the licence. The period specified may not exceed two years.
- 1.9 Under Section 2 of the DLUHC Guidance, attached as Appendix B to this report, Government has stated that the expectation is that local authorities are pragmatic and will grant licences to the maximum two years, unless there are good reasons for granting a licence for a shorter period, such as plans for future change in use of the road space.
- 1.10 A copy of the current standard conditions attached to each Pavement Licence is attached at Appendix C to this report.
- 1.11 An amended fee has also been prescribed in the legislation. Previously the fee for a temporary pavement licence was £100. This has now been amended and capped as follows: -
 - New Application – Maximum £500
 - Renewal Application – Maximum £350
- 1.12 To ensure residents can lead healthy, active and independent lives the Council will require that reasonable space is provided on any licensed outdoor seating for people who do not smoke, adequately separated from any seating where smoking is permitted. The needs of non-smokers to be able to use the seating provided without interference from smoke will be prioritised over provision of space for smokers.
- 1.13 It should be noted that Section 4.2 of the Government guidance states that, "The national smoke-free seating condition seeks to ensure customers have greater choice, so that both smokers and non-smokers are able to sit outside" and that "It is important that businesses can cater to their customers' preferences". The guidance goes on to explain that the smoking condition requires a licence-holder to make reasonable provision for seating where smoking is not permitted. This means that where businesses provide for smokers, customers will also have the option of sitting in a non-smoking area.

Key implications

Comments of the Chief Finance Officer

The S151 Officer confirms that there are no financial implications arising as a direct result of this Report.

Comments of the Head of Legal Services

As explained in the report the statutory provisions relating to pavement licences have now been made permanent by section 229 LURA2023 which has very recently come into force. Again, as mentioned in the report, the government has issued statutory guidance to local authorities in relation to pavement licences and the Council can only depart from this guidance where there is reasonable justification for doing so on a case-by-case basis. An example would be if the management of a particular business caused nuisance to neighbours or the wider public. Further legal advice will be given as necessary on individual cases to ensure that the public interest is protected.

As there is no statutory appeal process, any decision made by the Council is potentially open to a judicial review application and this should be taken into account when deciding whether to follow the statutory guidance referred to in paragraph 1.9 above.

Equality

The duration of a pavement licence would not have any direct equalities implications. Attached is our current guidance document with the statutory conditions that must be attached to each pavement licence issued by the Licensing Authority. Members should note that it is a legal requirement under the Business and Planning Act 2020 S5 (4) and (5) that a no obstruction condition is attached to each licence granted or deemed granted by the Authority.

The statutory conditions are detailed at Appendix C.

Climate change

There are no significant environmental / sustainability implications associated with this report.

Employment and Resource Implications

There are no employment and resource implications arising as a direct result of this report.

Consultation

There has been no consultation required in relation to the content of this report.

Communications

There are no communications requirements in relation to the content of this report.

Appendices

Appendix 'A' - Levelling Up and Regeneration Act 2023 (S229 and Schedule 22)

Appendix 'B' - Department for Levelling Up, Housing & Communities (DLUHC) Guidance issued on 2nd April 2024

Appendix 'C' - Standard Conditions for Pavement Licences

Background papers

Business & Planning Act 2020

The Levelling Up Act 2023 (LURA2023)

Guidance to Licensing Authorities issued by the Department for Levelling Up, Housing & Communities (DLUHC) issued 2nd April 2024

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