

East Herts Council

Executive

Date of Meeting: 7th July 2020

Report by: Executive Member for Neighbourhoods

Report title: Pavement Licence Policy and Procedure

Ward(s) affected: All

Summary

This report seeks approval of a proposed policy and procedure for determining pavement licence applications received by East Herts Council using new powers to be conferred on the council by the anticipated Business and Planning Act 2020 (currently in the form of a Bill passing through the Houses of Parliament).

RECOMMENDATIONS FOR Executive:

- (a) That the approach to determining applications for pavement licences, laid out in section 3 of this report, be approved;**
- (b) That the duration for a pavement licence shall be seven months;**
- (c) That authority to establish a schedule of standard conditions to attach to licences be delegated to the Head of Housing and Health;**
- (d) That responsibility for determining and, if required, revoking, pavement licences be delegated to the Head of Housing and Health;**

- (e) That fees be set at the maximum permitted level of £100 in order to, at least in part, recover the cost of issuing licences;**
- (f) That the making of any minor amendments to the policy and procedure be delegated to the Head of Housing and Health acting in consultation with the Executive Member for Neighbourhoods .**

1.0 Proposal(s)

- 1.1 To approve the council's policy and procedures for determining applications for pavement licences under the new power to be brought in by the Business and Planning Bill/Act 2020 once the current Bill gains Royal Assent.

2.0 Background

- 2.1 The Business and Planning Bill was put before Parliament on 25th June 2020. It is anticipated that it will have passed through both Houses of Parliament and gained Royal Assent during the first half of July 2020.
- 2.2 The Bill/Act introduces a number of powers for and requirements on local authorities that affect how they support local businesses and help economic recovery as the restrictions put in place by Government continue to be eased.
- 2.3 One of the most significant implications of the Bill/Act is the change in approach to outdoor seating provision of relevant businesses to enable them to increase their trading potential. Such licences are termed 'pavement licences'.
- 2.4 A pavement licence under the Bill/Act is a licence giving operators of businesses selling food and/or drink authorisation to put moveable furniture such as tables and chairs on the highway adjacent to their premises to

sell food and drink from and/or for their customers to use. In this instance, the guidance is suggesting that 'adjacent' should not solely connote contiguous or abutting, rather that somewhere 'very near' would be covered.

- 2.5 Of note, the Bill/Act makes district councils rather than county councils the bodies who decide on pavement licence applications. This is despite the fact that county councils, having responsibility for the highways, are the decision-making bodies for the existing pavement licensing regime. This existing regime is still in force although the expectation is that these new provisions will take precedence at this time. As a result of this, East Herts Council needs to ensure that everything is in place in order to allow pavement licence applications to be made and dealt with, and within a short timescale as it is expected that the businesses will be able to apply for the licences by mid-July and possibly as early as 8th July.
- 2.6 This report will explain what the requirements on the council are and what needs to be put in place urgently in order to meet these requirements.
- 2.7 The new powers for district councils (on the assumption the Bill receives Royal Assent) are temporary; the Bill/Act has a 'sunset clause' such that any pavement licences granted cannot extend beyond 30th September 2021, unless this backstop date is extended by the Government at some point.

3.0 Reason(s)

- 3.1 The council must have a procedure in place in order to determine pavement licence applications. A fee and the duration of licences need to be agreed, and appropriate delegations need to be in place.

Process

- 3.2 It is proposed that the following process is followed:

- all applications must be made online and payment of the application fee must be received to trigger processing the application
- seven day consultation period commences the day after application and payment of the application fee is made
- consultees are notified of application
- the applicant must post a public notice that must remain in place for the complete period of consultation
- seven day consultation closes
- any representations (that is, objections to the application) are received and considered in light of the provisions for granting, granting with conditions or refusal laid out in the Bill/Act and accompanying guidance
- the licence application is determined by the Head of Housing and Health so as to maximise the timeliness of decision-making
- the applicant is notified of the decision within seven days of consultation closing.

Consultees

3.3 The only statutory consultee is the Highways Authority (Hertfordshire County Council) although the council is obliged to consider any representations made. It is anticipated that representations will be made by, though not limited to, the police, Environmental Health, town and parish councils, ward members, other members, local businesses and members of the public.

Determination considerations and options

3.4 The options when determining an application are to:

- grant the licence in respect of any or all of the purposes specified in the application;
- grant the licence for some or all of the part of the highway specified in the application (the council can make its own determination as to how much of the space requested in the application the licence will be allowed to cover);
- impose conditions; or
- refuse the application.

3.5 The matters that must, under the Bill/Act, be considered when determining applications are the extent to which an application would be:

- (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,
- (b) preventing any use of vehicles which is permitted by a pedestrian planning order or which is not prohibited by a traffic order,
- (c) preventing statutory undertakers having access to any apparatus of theirs under, in, on or over the highway, or
- (d) preventing the operator of an electronic communications code network having access to any electronic communications apparatus kept installed for the purposes of that network under, in, on or over the highway.

- 3.6 The council will be required to make an evaluation of what is to be regarded as reasonably acceptable in the particular location, having regard to the temporary nature of the licence and the objectives of the Bill/Act.
- 3.7 The council must take into account any representations made to it during the public consultation period.
- 3.8 The legislation is essentially permissive, however, the guidance accompanying the Bill/Act indicates that when determining an application and, in particular, when attaching any conditions, the council may wish to consider:
- public health and safety – for example, ensuring that uses conform with latest guidance on social distancing and any reasonable crowd management measures needed;
 - public amenity – whether the proposed use might create nuisance to neighbouring occupiers by generating anti-social behaviour and litter;
 - 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;

- other users of the space, for example if there are high levels of pedestrian or cycle movements.
- 3.9 In addition to the list above, it is proposed that the council may wish to remain vigilant of the cumulative impact of the activity on pavements in a particular location.
- 3.10 It is proposed that the Head of Housing and Health establishes, before determination of the first pavement licence application, a schedule of standard conditions to apply to licences. In addition, the council has the ability to attach specific conditions relevant to a particular licence.
- 3.11 The Highways Authority (Hertfordshire County Council) retains the power under s149 of the Highways Act 1980 to remove things deposited on highways so as to be a nuisance notwithstanding they are placed there under a pavement licence.

Refusal of an application

- 3.12 An application would be refused if it were the case that even if the applicant amended the application and/or the council attached conditions, the application would still breach the highways, health and safety and/or public amenity issues laid out in paragraphs 3.5 and 3.8 above.
- 3.13 In the instance of an application being refused, details of the grounds for refusal will be provided by the council. There is no right of appeal, however, the applicant is, of course, at liberty to consider the reasons for refusal and seek to reapply having taken account of the reasons for refusal.

Duration of licences

- 3.14 The Bill/Act has a 'sunset clause' of 30th September 2021 on which date, unless extended by the Government, the

sole availability of the existing Highways Authority-led pavement licensing regime would resume. Based on modelling that licences will begin to be issued towards the end of July (given the likely timing of the passage of the Bill through Parliament), this gives 14 months until the end of these new provisions. The Bill/Act would require a licence to have minimum of three months' duration. The length of licence is to be balanced with administrative burden on the council of processing applications.

- 3.15 It is proposed that the pavement licences would be issued with seven month durations so as to allow an initial licence to run from summer 2020 to post-Christmas. The venue could then decide to apply for a new licence at that time. This would mean that venues wishing to have a pavement licence until 30th September 2021 would be required to make two applications; this is deemed manageable for both applicants and the council. For avoidance of doubt, a licence issued within seven months of 30th September 2021 would only run until this date (unless the Government amends the 'sunset clause' in the future in which case, licences of seven months' duration would continue to be issued).
- 3.16 The council may choose to impose a condition on a particular licence that means it is valid for a shorter period than the standard seven months if it is reasonable and justifiable that this is the only way to meet the requirements of the legislation and/or the standard conditions required by the council.

Revocation of a licence

- 3.17 If it comes to the council's attention that a pavement licence-holder is breaching the terms of the licence and/or any conditions attached to the licence, the council will firstly issue a notice containing the steps required of the licence-holder to remedy the breach. Additional or continued breaches would most likely lead to revocation, with each situation being considered on a case-by-case basis.
- 3.18 The Bill/Act enables the council to revoke a licence if it considers that:
- (a) some or all of the part of the relevant highway to which the licence relates has become unsuitable for any purpose in relation to which the licence was granted or deemed to be granted,
 - (b) as a result of the licence—
 - (i) there is a risk to public health or safety, or
 - (ii) anti-social behaviour or public nuisance is being caused or risks being caused,
 - (iii) the highway is being obstructed (other than by anything done by the licence-holder pursuant to the licence),
 - (c) anything material stated by the licence-holder in their application was false or misleading, or
 - (d) [it comes to the council's attention following the granting of the licence that] the licence-holder did not comply with the duty to fix the notice to the premises and secure that it remained in place during the public consultation period.

Monitoring performance

- 3.19 Applications will be handled by the Licensing and Enforcement Team within the Housing and Health Service. The team will, as with other licensing matters, keep records covering matters including the number

and location of applications, representations received, time to process and such like. Monitoring statistics can be made available to members as required.

4.0 Options

- 4.1 The policy and procedures for the determining pavement licences is not reserved for Council under the Bill/Act, therefore, these are Executive matters. The Executive has the power to delegate functions relating to the determination of applications to an officer. It is recommended to delegate this decision-making authority to the Head of Housing and Health, rather reserving this for the Executive or an individual member or members, to ensure timely determination. This is considered particularly important because if the council does not make a decision on an application within 14 days of receipt, the application will automatically be granted for 12 months with no conditions.
- 4.2 The length of licence granted is a matter for the authority to decide but must be a minimum of 3 months. The proposal detailed above is that any granted licence should run for a period of 7 months from the date of issue, subject to the 'sunset clause' date of 30th September 2021. As noted above, the council may determine that the only way an applicant can meet the requirements of the legislation or the council's conditions is to apply a condition giving the licence a duration of less than seven months.
- 4.3 The level of fee can be determined by the authority anywhere between charging no fee up to a maximum of £100. Officers have calculated that the maximum allowable fee will not cover the cost of administering the regime so it is recommended to charge the maximum £100 in order to recover as much of the cost of processing as possible.

5.0 Risks

- 5.1 As noted above, the Bill/Act requires the council to determine a licence within 14 days of receipt. If the council does not make a decision within this time, the licence shall automatically be deemed to have been granted with a duration of 12 months with no conditions. To avoid automatic approval, the procedures outlined in section 3 with the Head of Housing and Health being the decision-maker is proposed to enable decisions to be made in a timely way.
- 5.2 Failure to have a process in place to effectively determine applications in light of representations made runs the risk of:
- potential spread of coronavirus if safer ways of serving customers are not maximised
 - reputational damage to the council and potential legal challenge via Judicial Review
 - damage to the wellbeing of local residents if granting licences leads to significant nuisance that is not then dealt with effectively
 - risk to safety of patrons and other highway users if highway is obstructed increasing risk of incident as a result of other highway users.

6.0 Implications/Consultations

- 6.1 The speed with which this legislation is being introduced has prevented extensive consultation. The measures in this report have been discussed with the Executive Member for Neighbourhoods and the Chairman of the Licensing Committee.
- 6.2 The processing of applications is a new power for the council. There are no 'new burdens' monies being made available although a fee can be charged. The proposed maximum fee of £100 will be charged which will, in part,

cover the cost of processing applications.

Community Safety

Yes – Tacit consent applies so without a mechanism to consider applications all would be deemed granted which may result in an undermining of community safety.

Data Protection

No

Equalities

Yes – Specific applications may require an EQIA where it is likely to impact on individuals with protected characteristics.

Environmental Sustainability

No

Financial

Yes – The maximum fee will not allow the authority to recover the full costs of issuing a licence.

Health and Safety

Yes – the proper consideration of applications will maximise health & safety for workers and customers.

Human Resources

No

Human Rights

No

Legal

No

Specific Wards

No

7.0 Background papers, appendices and other relevant material

- 7.1 Ministry of Housing, Communities & Local Government, Draft guidance: pavement licences (outdoor seating proposal). Published 25 June 2020:
<https://www.gov.uk/government/publications/pavement-licences-draft-guidance/draft-guidance-pavement-licences-outdoor-seating-proposal>
- 7.2 Nexstart advice note on Pavement Licences:
<https://www.instituteoflicensing.org/news/covid-19-nextstart-guidance-on-pavement-licences/>

Contact Member

Councillor Peter Boylan

Executive Member for Neighbourhoods

peter.boylan@eastherts.gov.uk

Contact Officer

Jonathan Geall

Head of Head of Housing & Health

Contact Tel No 01992 531594

jonathan.geall@eastherts.gov.uk

Report Author

Oliver Rawlings

Service Manager – Licensing & Enforcement

oliver.rawlings@eastherts.gov.uk