

## RECORD OF DECISION MADE UNDER DELEGATED AUTHORITY

### **PART 1 – PUBLIC DOCUMENT**

**SERVICE DIRECTORATE:** Legal and Community

#### **1. DECISION TAKEN**

To set the Council's licensing fee for a pavement licence under the Business and Planning Act 2020 as £100 for a licence expiring on 30 September 2021

#### **2. DECISION TAKER**

Jeanette Thompson, Service Director Legal and Community

#### **3. DATE DECISION TAKEN:**

24 July 2020

#### **4. REASON FOR DECISION**

- 4.1 To ensure that the Council recovers its reasonable costs of undertaking its licensing function as provided for within legislation.

#### **5. ALTERNATIVE OPTIONS CONSIDERED**

- 5.1 No other alternatives were considered as the fee is capped at a maximum of £100 by legislation and licensing case law prevents the fee from recovering more than the Council's reasonable costs of administration and enforcement.

#### **6. CONSULTATION (INCLUDING THE EFFECT ON STAKEHOLDERS, PARTNERS AND THE PUBLIC)**

- 6.1 The Executive Member for Housing and Environmental Health has been consulted and supports the decision.

#### **7. FORWARD PLAN**

- 7.1 This decision is not a key Executive decision and has therefore not been referred to in the Forward Plan.

#### **8. BACKGROUND/ RELEVANT CONSIDERATIONS**

- 8.1 This new temporary legislation has been introduced to provide a fast-track alternative to the Highway Authority's street café licensing under Part VII of the Highways Act 1980. IT allows local businesses to place tables and chairs, and any other appropriate furniture, on the highway for the purposes of consuming food and drink supplied by the business adjacent to the outdoor seating area.
- 8.2 The Act has effect until 30 September 2021 and local authorities can issue licences for any period subject to a minimum duration of three months. The recommended licence duration in the Guidance is twelve months.

- 8.3 As most applications are likely to be granted with effect from early August, a twelve-month licence would require a renewal for the balance of August 2021 and September 2021.
- 8.4 Not only would this be an unnecessary regulatory burden for businesses, it would also be an unnecessary administrative burden for the Council, and would not currently be legally possible – given the minimum term of 3 months.
- 8.5 The Act allows for the suspension or revocation of a pavement licence where problems occur therefore it was deemed most suitable to issue a licence for the duration of the temporary legislation i.e. until 30 September 2021.
- 8.6 There were significant administrative processes involved in implementing this new legislation including designing an application form, producing a set of standard conditions, configuring the existing licensing database software to process these applications and publish them on the public register as required by the Act.
- 8.7 Consultation must take place on each application with the Highways Authority, the Police and any other business impacted by the application. The consultation is restricted to five working days with a further five working days to determine the application otherwise tacit consent applies.
- 8.8 The cost of administering an application, including the appropriate setting-up fees and ongoing enforcement, would be in excess of the prescribed £100 maximum.
- 8.9 The initial set-up and administration costs are the same irrespective of the length of licence therefore a fixed fee of £100 was deemed the most appropriate. This would allow businesses to apply now for the one-off fee and hold a licence until 30 September 2021.
- 8.10 As the Act was introduced to assist businesses with their recovery from the Covid-19 lockdown, this decision was deemed to be the most cost effective for businesses whilst ensuring the Council recovers its costs where provided for in legislation.

## **9. LEGAL IMPLICATIONS**

- 9.1 Section 14.6.4(a)(viii) of the Council Constitution delegates the following powers to the Chief Executive, the Deputy Chief Executive and the Service Directors:
- To set fees and charges in accordance with the Council's Financial Regulations and relevant policies, in consultation with the Executive Member*
- 9.2 Section 14.6.8(b)(xiv) further delegates the Service Director: Legal and Community:
- Licensing including all functions under all relevant Licensing legislation other than matters reserved to the Licensing and Appeals Committee and Full Council.*
- 9.3 The setting of fees is predominately a Council function by virtue of Regulation 2(6) of the Local Authorities (Functions and Responsibilities) (England) Regulations 2000, as amended, which states:
- (e) where a charge is made for any such approval, consent, licence, permit or registration, the amount of the charge, is not to be the responsibility of an executive of the authority.*
- 9.4 Section 8(2) of the Business and Planning Act 2020 amended Schedule 1 to the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 to include 'functions relating to pavement licences' as a matter which is not to be the responsibility of the Executive.

**10. FINANCIAL IMPLICATIONS**

10.1. This decision ensures that the Council recovers the maximum amount of its reasonable costs associated with this licensing function as provided for in legislation.

**11. RISK IMPLICATIONS**

11.1 The Council is required to accept applications under the new Act therefore not setting a fee would risk the Council undertaking an unknown number of applications without recovering its allowable costs.

**12. EQUALITIES IMPLICATIONS**

12.1 In line with the Public Sector Equality Duty, public bodies must, in the exercise of their functions, give due regard to the need to eliminate discrimination, harassment, victimisation, to advance equality of opportunity and foster good relations between those who share a protected characteristic and those who do not.

12.2 There are no equalities implications as a result of this decision.

**13. SOCIAL VALUE IMPLICATIONS**

13.1 The Social Value Act and “go local” policy do not apply to this decision.

**14. ENVIRONMENTAL IMPLICATIONS**

14.1. There are no known Environmental impacts or requirements that apply to this decision

**15. HUMAN RESOURCE IMPLICATIONS**

15.1 This decision will have no impact on staffing resources.

**16. BACKGROUND PAPERS**

16.1 [Business and Planning Act 2020](#)

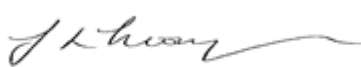
16.2 [Guidance issued by the Secretary of State in respect of Pavement Licensing](#)

**NOTIFICATION DATE**

This is not an Executive decision therefore is not subject to scrutiny call-in.

**Signature of Executive Member Consulted .....**  
**Cllr Grindal confirmed agreement by email**

**Date .....24 July 2020**

**Signature of Decision Taker .....**  **...**