

Committee:	Date:
Planning and Transportation	6 th October 2020
Subject: Business and Planning Act 2020	Public
Report of: Remembrancer Report author: Kiki Hausdorff	For Information
<p style="text-align: center;"><u>Summary</u></p> <p>This report advises the Committee of relevant provisions of the Business and Planning Act 2020, which came into effect on 22 July, as it affects the interests of this Committee. The Act introduced a new temporary regime for table and chair licences intended to help food and drink outlets trade and comply with social distancing guidelines. It also automatically extended on-sales alcohol licences to permit off-sales, allowing the sale of alcohol for consumption off-premises during the times that on-sales are permitted.</p> <p style="text-align: center;"><u>Recommendation</u></p> <p>It is recommended that the Committee receives this Report and notes the requirements of the temporary regime.</p>	

Report

Background

1. A pavement licence is a licence to put removable furniture on part of a pavement adjacent to the premises of the licence holder, in order to sell or serve food or drink, or for use by customers consuming food or drink. “Furniture” includes counters and stalls, tables and chairs and articles such as umbrellas, barriers and heaters.
2. During the COVID-19 lockdown, the Corporation suspended all 138 of its existing pavement licences. In advance of the reopening of venues over the summer, a decision was taken at your 2nd June Committee that, while social distancing requirements remain in place, pavement licences should be

reviewed on a case by case basis by officers before being reinstated, subject to five key principles:

- i) To put safety first
 - ii) To recognise the need to nurture a thriving economy in the City
 - iii) No privatisation of public space
 - iv) Having regard to space required to queue outside premises
 - v) Having regard to new or existing public seating nearby
3. Pavement licences were previously granted primarily under Part 7A of the Highways Act 1980. The new regime established by the Business and Planning Act 2020 introduced several changes to the licensing procedure which are set out in the following paragraphs.
 4. The 2020 Act does not prevent businesses from applying under the 1980 Act for any permissions which they could also be granted under the 2020 Act. However, the 2020 Act offers applicants a more expedited process for the determination of pavement licences than that provided by the 1980 Act.
 5. A local authority may not require businesses to apply for permission under the 1980 Act instead of the 2020 Act. Once a pavement licence has been granted under the 2020 Act, any permission subsequently granted under the 1980 Act to do anything which could be done under the pavement licence has no effect while the pavement licence is in force.

Administrative matters

6. Under the Act, applications to the local authority (the Corporation) for pavement licences must be made in writing in such form as the authority may specify and must be submitted by electronic means in such manner as the authority may specify.
7. Applications must be accompanied by a fee which will be set by the local authority, subject to a cap of £100. Previously, the Corporation had charged application fees of a minimum of £400, based on full cost recovery.
8. The local authority must, in a manner which it considers appropriate, publish the application and any additional information or material it has requested from the applicant, and publicise the timing for the public consultation period relating to that application.
9. The Act has reduced the public consultation period from 28 days to 7 days. The authority must consider any representations made to it during this time,

which is followed by a 7-day determination period. If the local authority does not decide on the application within this time, the licence applied for is deemed to be granted by the authority to the applicant for a year (but not beyond 30 September 2021).

10. The local authority may grant the licence for three months or longer, so long as the licence does not extend beyond 30 September 2021. If the authority does not specify the period of the licence, the licence expires at the end of 30 September 2021.

Factors to be considered by the local authority

11. The local authority may grant a pavement licence only if it considers, amongst other factors, that the licence would not prevent non-vehicular traffic from (a) entering the pavement where they could otherwise enter it, (b) passing along the pavement, or (c) having normal access to premises adjoining the pavement, nor prevent any use of vehicles otherwise permitted or not otherwise prohibited.
12. In considering the above factors, the local authority must have particular regard to the needs of disabled people and the recommended distances required for access by disabled people, as set out in guidance issued by the Secretary of State.
13. The local authority must also have regard to the Public Sector Equality Duty under the Equality Act 2010 when implementing the new licensing regime, which includes the need to have due regard to eliminate discrimination, harassment, victimisation and any other conduct prohibited by the Act.
14. There are few streets in the City that can accommodate both furniture and social distancing for pedestrians. The Corporation's policy has previously been not to grant pavement licences for the use of heaters and barriers, and only to grant tables and chairs licences where there would be at least 2.2m (7.2ft) of unimpeded footway remaining for pedestrians.
15. With an additional 1 metre distance reserved for social distancing, the minimum width of remaining footway to enable safe passage with tables and chairs in place increases to 3.2m (10.5ft). There are relatively few streets in the City where this is possible; it was estimated that around only 40 existing licences could be reinstated under these provisions of the Act.

Conditions

16. All pavement licences granted under the Act are subject to a no-obstruction condition (i.e. the licence meets the conditions in paragraph 9 above) and a smoke-free seating condition (the licence-holder must make reasonable

provision for seating where smoking is not permitted). In considering whether the licence holder has met the latter condition, the local authority must have regard to guidance issued by the Secretary of State (which may also specify further conditions).

17. The local authority may place any additional conditions on the licence which it considers reasonable. The Corporation will include in its pavement licences a condition to require the business to comply with the Government's COVID-19 Guidance, in order to ensure a safe environment for customers and staff.
18. The local authority may publish conditions subject to which it proposes to grant pavement licences, and any licences deemed to be granted after the end of the determination date will be subject to those conditions.
19. Where the local authority considers that the licence-holder has breached any condition of the licence, it may revoke the licence or require them to take steps to remedy the breach. If the licence-holder fails to do so, the authority may take the steps itself and recover the costs of doing so from the licence-holder.
20. The local authority may also revoke the licence if it considers that the pavement has become unsuitable for the purpose for which the licence was granted, if there is a risk to public health or safety or of anti-social behaviour or public nuisance, or if the pavement is being obstructed.

Off-sales licences

21. The Act automatically extends all existing on-sales licences to allow for off-sales during the times that on-sales are permitted, until 11pm. Of course, further COVID-related Regulations which, for example, impose a 10pm curfew on hospitality venues, institute further restrictions while they are in force.
22. On-sales licences are only so extended if no disqualifying events have occurred within the previous three years. A disqualifying event has occurred if (a) the licensing authority refused to grant a licence authorising off-sales, (b) the licensing authority refused to vary the premises licence so as to authorise off-sales, or (c) the licence was varied so as to exclude off-sales.

Contact:

Kiki Hausdorff
Assistant Parliamentary Affairs Counsel
Remembrancer's Office
Kiki.Hausdorff@cityoflondon.gov.uk