



Regulatory Committee

**Thursday 15th September
2022**

**Subject: Pavement Licenses - Extension of Sub Delegation to
Lincolnshire County Council**

Report by:	Director – Change Management, ICT & Regulatory Services
Contact Officer:	Andy Gray Housing and Enforcement Manager andy.gray@west-lindsey.gov.uk
Purpose / Summary:	To propose that the existing Sub Delegation of Pavement Licenses to Lincolnshire County Council is extended until 30 th September 2023.

RECOMMENDATION(S):

Regulatory Committee are asked to approve that:

- a) The Districts Council's function in relation to "Pavement Licenses" under the Business and Planning Act 2020 be delegated to Lincolnshire County Council for a further 12 months up until the 30th September 2023.
- b) The Districts Council's function in relation to "Pavement Licenses" under the Business and Planning Act 2020 be delegated to Lincolnshire County Council for a further 12 months beyond this, to 30th September 2024, subject to the provisions within the bill remaining in place.
- c) Information relating to "Pavement Licenses" be shared electronically with members of the Regulatory Committee in advance of the end date of each delegation for their consideration to enable them to determine whether the matter should be called back to Committee prior to the delegation ceasing.

IMPLICATIONS

Legal:

The Business and Planning Act 2020, in relation to Coronavirus, gave powers to lower tier local authorities to determine and issue pavement licenses. This power was not a power that had been previously held by lower tier authorities and had always previously been a power held by upper tier authorities.

The original regulations came into effect until September 2021, were extended until September 2022 and have been further extended until September 2023 here. The process for this is set out here

<https://www.gov.uk/government/publications/pavement-licences-draft-guidance/draft-guidance-pavement-licences-outdoor-seating-proposal>

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It is possible for any delegation of functions to another authority to be rescinded at a later date should it be required.

Financial: FIN/68/23/SL

Lincolnshire County Council have not charged a fee to the Council in delegating authority to them to deliver the function. There will be no change to this for the additional period to September 2023.

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 :

None noted.

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 :

None noted

Climate Related Risks and Opportunities :

None noted

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:

The provision of pavement licenses is seen as a key method for ensuring that businesses can reopen and continue to function effectively after the main period of the covid-19 pandemic.

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

Delegated Decision: Dated 21 July 2020 "Street Licenses"

[Officer decisions | West Lindsey District Council \(west-lindsey.gov.uk\)](http://west-lindsey.gov.uk)

Regulatory Committee Report: Dated September 16th 2021:
<https://democracy.west-lindsey.gov.uk/ieListDocuments.aspx?CId=262&MIId=2907&Ver=4>

Risk Assessment :

Non-renewal of sub delegation: there are limited resources within the authority to set up and deliver the pavement licenses provision. The service is also provided free of charge, therefore any activity in relation to it will be an additional cost to the Council.

Existing Expertise: The County Council already determine licenses such as this therefore have the required resource and expertise to deliver the function.

Call in and Urgency:

Is the decision one which Rule 14.7 of the Scrutiny Procedure Rules apply?

i.e. is the report exempt from being called in due to urgency (in consultation with C&I chairman)

Yes

No

Key Decision:

A matter which affects two or more wards, or has significant financial implications

Yes

No

1 Introduction

- 1.1 On the 21st July 2020 an Urgent Delegated Decision was made to delegate the District Council's function in relation to "Pavement Licences" under the Business and Planning Act 2020 to Lincolnshire County Council up until the 30th September 2021. This decision to delegate was further ratified for another 12 months at the Regulatory Committee meeting held on 16th September 2021, extending the delegation to 30th September 2022.
- 1.2 It has now been confirmed that the provisions within the Act will be extended until the 30th of September 2023. This paper sets out the basis for proposing to continue this delegation.

2 Background

- 2.1 Prior to this Act 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 were determined by Lincolnshire County Council (LCC) under the Highways Act 1980.
- 2.2 The Act introduced a streamlined route for businesses to secure a licence to place furniture on the highway and bypasses the existing regulatory regime. The government continues to intend to support businesses to operate safely during recovery from Covid-19 and this extension is part of this process. The Act places the responsibility for issuing the licences on district councils, in consultation with the highways authority and other relevant persons, until 30 September 2023.
- 2.3 There is now a need to deliver this service until 30th September 2023.

3 Current Sub Delegation

- 3.1 From July 2021 LCC have provided the following for no fee as it is included within their existing licensing provision;
 - 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 To date there are 7 active licenses within West Lindsey, which LCC have determined. These are shown below. Alongside this, two applicants did not reapply after expiry and a further two applications were refused.

NAME	STAGE OF PROCESS	Legislation	LICENCE TYPE	EXPIRES	LOCATION
Canute	APPROVED	Prior	Renewal	30 September 2022	12-14 Silver Street, Gainsborough, DN21 2DP
Clock House	APPROVED	Prior	Renewal	30 September 2022	3 Lord Street, Gainsborough, DN21 2DD
Pig & Poke	APPROVED	B & P 2020	New	30 September 2022	Market Place, Caistor, LN7 6GA
Tillbridge Tastery	APPROVED	B & P 2020	New	30 September 2022	4 High Street, Sturton By Stow, LN1 2AE
Sweet Carolines	APPROVED	B & P 2020	New	30 September 2022	11-15 Silver Street, Gainsborough, DN21 2DT
Family Café/Teco Toys	APPROVED	B & P 2020	New	30 September 2022	4 Silver Street, Gainsborough, DN21 2DP
Black Bull	APPROVED	B & P 2020	New	30 September 2022	25-27 Lord Street, Gainsborough, DN21 2DD

3.3 The District Council and other stakeholders (i.e. The Police) are consulted with as part of any new application. The application is currently free of charge to businesses.

3.4 The District Council are responsible for ensuring that all relevant parties are made aware of the application including the relevant elected Ward Members.

3.5 The new streamlined process detailed in the Act 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, then 2022, now 2023).

4 Alternative Options

4.1 In previous conversations about the delegation there has been a suggestion that the Council may wish to deliver this function independently and not delegate the authority to the County Council.

- 4.2 The Council could choose to administer this function itself. 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 the above provisions are not in place there is a risk of deemed licences as a result of non-determination. Given the way the sub-delegation is working and the relatively small number of applications it does not appear as though there is any benefit to changing the sub-delegation for a 12-month period. Alongside this, LCC are offering this service for free to those businesses that apply, therefore the Council would be advised to do the same in order to ensure that applications came forward and to avoid a negative reputational impact.
- 4.4 A more detailed business case for this could be produced, however the basic financial aspects of the situation mean that the service would be delivered at a deficit and an increase in applications would result in an increase in deficit.
- 4.5 Given that the Act continues to be extended annually, this report asks Committee to agree in advance a delegation for the following year, up to 30th September 2024 to avoid having to bring a further report on the same matter back to Committee in that instance.

END