



**Regulatory Committee**

**Thursday 15<sup>th</sup> June 2023**

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

Report by:

Director – Change Management, ICT &  
Regulatory Services

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Purpose / Summary:

To seek approval for an amendment to the  
existing sub-delegation in regards to pavement  
licenses.

**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 and subsequently the Levelling Up and Regeneration Bill be delegated to Lincolnshire County Council until September 2024.
- b) The District Council confirm that within the delegation until September 2024, Lincolnshire County Council be permitted to set and charge a fee of up to £500 for a new licence and £350 for a renewal.
- c) A summary of the delegation relating to Pavement Licenses will be presented to Regulatory Committee annually and any further delegations considered within this.

**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-draftguidance/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.

This Act is going to be replaced by the Levelling-Up and Regeneration Bill, which will contain a specific schedule relating to pavement licenses.

It is possible for any delegation of functions to another authority to be rescinded at a later date should it be required.

**Financial: FIN/12/24/MT/SSc**

Lincolnshire County Council have not charged a fee to the Council in delegating authority to them to deliver the function to date.

The Levelling-Up and Regeneration Bill now enables the administering authority to charge a fee of up to £500 for a new application and £350 for a renewal.

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 currently minimal, however has decreased and can be difficult to predict in terms of determining how to resource a service.

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, considering 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:**

None noted.

**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 \(west-lindsey.gov.uk\)](https://democracy.west-lindsey.gov.uk)

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

Regulatory Committee Report: dates Dated September 22<sup>nd</sup> 2022:  
<https://democracy.west-lindsey.gov.uk/ieListDocuments.aspx?CId=262&MIId=3340&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. Even with the additional fee, there is still not believed to be a viable business case given the number of licenses issued and renewed annually.

**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 In September 2022, Regulatory Committee agreed to delegate the District Councils function under the Business and Planning Act 2020 for “Pavement Licences” to Lincolnshire County Council for a further 12 months up until the 30<sup>th</sup> September 2023. The Committee also agreed to delegate the same function until 30<sup>th</sup> September 2024, subject to the provisions within the bill remaining in place.
- 1.2 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.
- 1.3 Since September 2022, the Government have been seeking approval for the Levelling-Up and Regeneration Bill (The Bill), which will include the provisions for Pavement Licences and mean that the Business and Planning Act 2020 will be repealed.

## 2 Reason for Revision of Sub Delegation

- 2.1 The revised legislation within The Bill now enables the Local Authority to charge an increased fee for the issuing of and the renewal of a Pavement Licence. The current Act allows for a fee of £100 to be charged and to date, LCC under the sub-delegation have provided the service for no fee.
- 2.2 The Bill now enables a fee of £500 to be charged for a new licence and £350 to be charged for a renewal. It is believed that Committee need to further consider the sub-delegation and these revised fees as they were not considered when the original decision was made in September 2022.
- 2.3 LCC have confirmed that if the sub-delegation continues, they would wish to charge the full fee for both the new application and the renewal.

## 3 Current Licenses

- 3.1 To date there are only 2 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.

JADU REF	NAME	DATE REC'D	STAGE OF PROCESS	Legislation	EXPIRES	LOCATION
PCL000010	The Plough/ Greek2Me	07/09/2022	Cancelled	B&P 2020	TBD	The Green, Nettleham
PCL000075	Canute	26/09/2022	Licence Issued	B&P 2020	30/09/2023	12-14 Silver St, Gainsborough DN21 2DP

- 3.2 When the report was presented to Regulatory Committee in September 2022 there were 7 active licenses. Many of these were applied for during the pandemic where businesses were using additional outside spaces due to the indoor restrictions in place and the public's reticence to dine indoors.
- 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 and LCC remain the enforcing authority.
- 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 Options Available**

- 4.1 It is believed that the Council have two options in relation to pavement licenses.
- Continue with and amend the sub-delegation to enable the charging of fees as per The Bill.
  - Cease the sub-delegation and deliver the service in house.
- 4.2 Given the extent of the licenses issued and the role LCC already play in regards to pavement licenses (they are the statutory enforcement body), it is not believed to be viable to deliver the service in house. The Licensing work area currently covers all of the Council's statutory licensing functions, alongside dealing with Public Health Funerals and elements of the cemetery's operation. Pavement licensing would be an additional and new function for the team and additional resource would be required to be allocated if it were to be set up as a new service. If the demand increased significantly it could potentially be implemented at a future point in time.
- 4.3 This would also be a new function for the Council there are currently no processes in place, limited knowledge or experience of this function. If the above provisions are not in place there is a risk of deemed licences as a result of non-determination.
- 4.4 As the fee is currently zero, the increase to £500 may significantly limit the number of businesses that wish to apply. Where a business requires a small number of outdoor seats, it may not be cost effective to go down the route of applying for a licence.

- 4.5 Given that the Act is transferring into the proposed Bill, this report asks Committee to agree to continue the existing delegation until the end of September 2023 and subsequently September 2024.
- 4.6 Committee are also asked to confirm that along with the delegation, agreement is given for LCC to charge the licence and renewal amounts as stated within this report.
- 4.7 Committee will retain the ability to review and amend this delegation as required during this time period. Officers will also continue to monitor the application levels to enable continual consideration of whether the service could be delivered in house.

**END**