



**SOUTH
KESTEVEN
DISTRICT
COUNCIL**

Officer Delegated Decision

6 August 2020

Karen Bradford, Chief Executive



Pavement licences – Delegation to Lincolnshire County Council

The Business and Planning Act 2020 introduced new provisions for an expedited process allowing businesses selling food and drink to apply to the district council for authorisation to put furniture such as tables and chairs on the highway adjacent to their premises. This report seeks agreement to delegate this function to Lincolnshire County Council.

Decision made by:	Karen Bradford, Chief Executive
Decision:	To delegate the functions contained in Part 1 of the Business and Planning Act 2020 relating to pavement licensing to Lincolnshire County Council.
Date:	6 August 2020
Public or Exempt:	Public
Reasons for exemption:	N/A
Conflicts of interest:	No
Policy compliant:	Yes
Details of delegation:	<p>Article 16 of the Constitution provides: in an emergency, the Chief Executive (and any officer(s) authorised by the Chief Executive) is authorised to take any and / all action(s) he/she considers appropriate to protect and / or further the best interests of the Council, the district of South Kesteven and / or the public subject to:</p> <ul style="list-style-type: none"> i) Consultation with the Leader of the Council or in his /her absence the Deputy Leader and any appropriate member of the Cabinet ii) A report of the action taken and the reasons behind it being presented to the next meeting of the Cabinet, the Council or the relevant Committee iii) Informing the Opposition Group Leaders of the action that has been taken

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1 The Purpose of the Report

- 1.1 The Business and Planning Bill introduced a streamlined route for businesses to secure a licence to place furniture on the highway adjacent to their premises. This bypasses the existing regulatory regime administered locally by Lincolnshire County Council and places the responsibility for issuing the licences on district councils until 30 September 2021.
- 1.2 The Business and Planning Act 2020 received Royal Assent on 22 July 2020, with Section 1 which related to pavement licensing coming into effect on the same day. In anticipation of the immediate implementation, on 21 July 2020 the Chief Executive made the decision (under delegated authority given by Cabinet on 7 July 2020) to delegate the pavement licensing function to the executive of Lincolnshire County Council. This was to ensure that applications could be processed from the day the Act took effect.
- 1.3 When enacted, a new clause which was not included in the Bill had been inserted into the Act making the functions relating to pavement licensing non-executive functions which could not be dealt with by the Cabinet. Accordingly, the decision to delegate the function to the Lincolnshire County Council executive is no longer valid.
- 1.4 In order to ensure that the function can be exercised expediently and to prevent delays in determining applications, the Chief Executive is asked to consider the decision again, using emergency provisions contained in the Constitution.
- 1.5 Lincolnshire County Council has made appropriate arrangements to accept the delegation.

2 Comments of Consultees

- 2.1 In accordance with the delegation, the Leader has been consulted and is in agreement with the decision. The Opposition Group Leaders have also been informed of the proposed action.

3 Available Options Considered

- 3.1 The Council could choose to administer this function itself, however, as this would be a new function for the Council there are currently no processes in place, no knowledge or experience of this function, and existing staff capacity to take on this additional function is limited. Lincolnshire County Council already has the necessary processes in place to receive and determine applications.

4 Preferred Option

- 4.1 Due to pressing time constraints and the lack of established processes and procedures, it is preferred that the Council delegate the function to Lincolnshire County Council.

5 Reasons for the Decision (s)

- 5.1 The delegation will ensure that the Council can meet its obligations to determine pavement licences under the Act in an effective manner.

6 Financial Implications

- 6.1 Lincolnshire County Council has confirmed that there would be no cost to the Council in delegating authority to it to deliver the function.

Financial Implications reviewed by: Richard Wyles, Interim Director of Finance

7 Legal and Governance Implications

- 7.1 Section 1 of the Business and Planning Act 2020 relating to pavement licensing came into effect on 22 July 2020.
- 7.2 In accordance with section 8 of the Act, the functions relating to pavement licences are non-executive functions and cannot be dealt with by the Cabinet.
- 7.3 Under section 101 of the Local Government Act 1972, a local authority may arrange for the discharge of any of its non-executive functions by another local authority.
- 7.4 The Chief Executive made the delegation to the executive of Lincolnshire County Council in accordance with the delegation from Cabinet. The change to the Act made this a non-executive function meaning that administratively a new decision is necessary. The decision to delegate the function is unchanged.
- 7.5 This decision is a purely administrative one, which, but for the unexpected change in the Act, was one which the Cabinet agreed to delegate to the Chief Executive. That decision of Cabinet was not “called in”.
- 7.6 Given the administrative nature of the decision, and given the urgency to delegate this function to the County Council, the use of the emergency power is considered appropriate, as the alternative would have been to call an extraordinary meeting of Council to deal with this one issue.

Legal Implications reviewed by: Shahin Ismail, Director of Law and Governance

8 Equality and Safeguarding implications

- 8.1 The Act contains provisions which require that every licence is deemed to be subject to a "no obstruction condition". When determining whether furniture constitutes an unacceptable obstruction in light of the no-obstruction condition, the provisions require that local authorities consider the needs of disabled people.

9 How will the recommendations support South Kesteven District Council’s declaration of a climate emergency?

- 9.1 The delegation of the function to another authority is considered carbon neutral.

10 Appendices

- 10.1 None

Report Timeline:	Call-in deadline (where applicable)	Not applicable
	Date decision effective (subject to call-in)	6 August 2020

Signed by: *Karen Bradford, Chief Executive*

Date: *6 August 2020*

In consultation with:

Councillor Kelham Cooke, the Leader of the Council

Notification provided to:

Councillor Paul Wood (Leader of the Independent Group)

Councillor Charmaine Morgan (Leader of the Labour Group)