

**COUNCIL**  
**29 JULY 2020**

## **BUSINESS AND PLANNING BILL – PAVEMENT LICENCES**

**Council Member(s):** Cllr Dennis Knowles, Council Member for Community Well-being

**Responsible Officer:** Simon Newcombe, Group Manager for Public Health and Regulatory Services

### **REASON FOR REPORT:**

On 25 June 2020, the Government published the Business and Planning Bill 2020. This Bill passed all stages in the House of Commons on 29 June 2020 and is due to be considered in the House of Lords on 6 July 2020. Given its fast passage through Parliament, it is likely to become law very soon and the local authority must consider its implications and prepare to implement its provisions.

The relevant parts of this new legislation (covered in this report) are aimed at supporting businesses and helping them to reopen following the gradual lifting of COVID-19 related restrictions. From a licensing perspective, it introduces a significant new licensing regime for 'pavement licences', which will enable premises serving food and drink to provide seating (and serve) customers on certain highways. It also amends existing provisions within the Licensing Act 2003, providing an automatic extension to the terms of 'ON' sale alcohol licences to allow 'OFF' sales until the end of September 2021.

This report provides details of these emerging licensing changes and requests that the Group manager for Public Health be given delegated authority to enable pavement licences to be properly administered by the Service, which includes setting the relevant fee.

### **RECOMMENDATIONS:**

- 1. That Council note the provisions of the Business and Planning Bill.**
- 2. That Council delegate authority to the Group Manager for Public Health for the administration and enforcement of the provisions within the Business and Planning Bill on its passing into law. These delegations can then be sub-delegated to relevant officers.**
- 3. That Council delegate authority to the Group Manager for Public Health for the setting of the fee for pavement licences.**

**Relationship to Corporate Plan:** Business development and growth; Improving and regenerating our town centres; Increasing activity and promoting health and wellbeing.

**Financial Implications:** The new legislation states that an application must be accompanied by such fee not exceeding £100 (as the local authority may require).

Consequently there is some discretion in that an authority may set the fee at less than £100.

In consideration of the work required, it is proposed to set the fee at £100 and further information about this is provided within the report.

**Legal Implications:** The new legislation requires the local authority to administer these licences and as such it is a service that must be provided and this is not a discretionary function. The relevant local authority for the purposes of the legislation are District Councils where they exist.

The Local Government Act 2000 provides that any function of the local authority, unless specified to the contrary in regulations published under that Act, is to be the responsibility of an executive of the authority under executive arrangements. The Local Authorities (Functions and Responsibilities) Regulations 2000 (as amended) provide that certain licensing functions are not to be the responsibility of the executive – these are specified in detail i.e. by a description and by reference to the relevant legislation. As at 20 July 2020, there was nothing in the draft legislation which indicated that these powers and duties would not be for the executive. However, that changed on 21 July with the approval of a House of Lords amendment. That is the reason why this report is now being brought to the Council, having previously been considered by Cabinet on 9<sup>th</sup> July.

The new legislation will introduce a new streamlined licensing regime to temporarily replace existing licences to facilitate eating and drinking on the highway adjacent to a relevant premises. In essence, this replaces relevant elements of the Licensing Act 2003 – especially provisions around off sales and licence variations street café licences to place furniture on the highway under the Highways Act 1980, currently administered by this Council and Devon County Council respectively. It also suspends the requirement for planning permission as may have previously been required under the Town and Country Planning Act 1990.

In relation to the applications themselves, although there is no statutory appeal process for these decisions, the Licensing Team within Public Health and Regulatory Services are planning on introducing an 'internal review process' (similar to that of the existing animal licensing regime). For example, if an application is refused, the applicant may appeal the decision but this appeal will be determined by a different officer, appropriately trained and delegated, who will review all relevant information and either uphold the original decision or overturn it (thereby granting a licence).

**Risk Assessment:** The legislation is permissive and introduces a streamlined and more cost-effective route for businesses.

This means that if the local authority does not determine the application before the end of the determination period (i.e. 10 working days from the day after the application is made), the licence is deemed to have been granted (subject to any relevant conditions). This means that the local authority must ensure it considers, consults and makes a decision on all applications within this time frame. The placement of tables and chairs in unsafe spaces or in areas which are not suited to such use may have an

impact of public health and safety and public nuisance so the risk is that by not dealing with an application in time, the licence is considered granted and problems may arise.

**Equality Impact Assessment:** The general public sector equality duty within the Equality Act 2010 has overarching application and requires public bodies to have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act
- Advance equality of opportunity within and between people who share a protected characteristic and those who do not
- Foster good relations between people who share a protected characteristic and those who do not.

When carrying out any of its functions, the Council must comply with this duty.

**Impact on Climate Change:** No impacts identified for this report.

## 1.0 Introduction

1.1 The COVID-19 pandemic has had a significant impact on a range of businesses, none more so than those in the hospitality sector. Many businesses have had to close (or operate in a different manner) and these restrictions have been in place since 23 March 2020. The Government has recently confirmed that from 4 July 2020, a number of businesses will, to some extent, be able to reopen (assuming they have the necessary health and safety arrangements in place).

1.2 These businesses include a number of premises that this authority is already responsible for licensing and regulating (i.e. public houses, cafes, bars and restaurants).

1.3 In order to support businesses in reopening, the Government published the Business and Planning Bill 2020 on 25 June 2020).

1.4 The aims of the Bill are set out in its Explanatory Notes, as follows:

*'Covid-19 has affected businesses across the economy. Many businesses have had to cease trading for several months, and others have had to significantly modify their operations. As the economy starts to re-open, the Government wants to do all it can to support recovery, help businesses adjust to new ways of working and create new jobs. This Bill introduces a number of urgent measures to help businesses succeed in these new and challenging conditions over the coming months, and to remove short term obstacles that could get in their way. Almost all measures are temporary, with some limited exceptions'.*

1.5 Following a fast tracked procedure, the Bill passed all stages in the House of Commons on 29 June 2020 and is due to be considered in the House of Lords on 6 July 2020. Given its fast passage through Parliament, and the fact that it is designed to allow outside areas to be used for eating and drinking (thereby

making use of the warmer summer months), it is likely to become law very soon and the local authority must consider its implications and prepare to implement its provisions.

- 1.6 It contains two important licensing provisions. Firstly, it introduces a new 'pavement licence' regime and secondly, it provides amendments to the Licensing Act 2003 for licensed premises. At the time of writing, many of the provisions it includes are temporary, and last until the end of September 2021.
- 1.7 Both of these provisions deal with a specific issue that local authorities were working to resolve in the run up to 4 July 2020, and this was trying to ensure that premises had the correct permissions / authorisations in place to properly use outside areas and allow additional space for social distancing.

## **2.0 Pavement licences**

- 2.1 The forthcoming Business and Planning Act 2020 (the "Act") will introduce a new 'pavement licence' regime which is to be administered by the Local Authority. It enables premises serving food and drink, such as public houses, cafes, bars, restaurants, snack bars, market stalls, coffee shops, and ice cream parlours to provide seating (and serve) customers on certain highways.
- 2.2 The Act will introduce a streamlined and cheaper route for businesses to apply for a licence to place furniture on the highway. Previous to this, and in Mid Devon, premises applied to Devon County Council for a street café licence (under Part 7A of the Highways Act 1980). This required a 28 day public consultation process and had an initial cost of £200 (although it should be noted that Devon County Council recently introduced a 'temporary permit' which allowed businesses to provide outdoor seating during the consultation period). Devon County Council will continue to administer the existing street café licences, and Mid Devon District Council will be responsible for administering this new licensing regime.
- 3.3 This report does not seek to replicate all of the details of the new street pavement licences (which can be viewed in the Bill itself) but some of the most notable points are highlighted below:
  - a) The types of premises that can apply for a licence are fairly broad and are defined as being those premises used, or proposed to be used as:
    - a public house, wine bar or other drinking establishment; or
    - other use for the sale of food or drink for consumption on or off the premises.
  - b) A pavement licence permits furniture to be temporarily placed on the highway. "Furniture" includes stalls for selling or serving food or drink, tables and chairs and articles such as umbrellas, barriers and heaters.

- c) An application must be made by electronic means and be accompanied by a fee which will be set by the local authority, subject to a cap of £100.
- d) In addition to a Notice on the premises itself, the local authority must publish the application and invite representations.
- e) The local authority must consult the highways authority where the local authority is not itself the highways authority for the land. It must also consult such other persons as it considers appropriate.
- f) The local authority may grant or reject the application and, in granting the application, they may make their own determination as to how much of the space requested the licence will cover.
- g) If the local authority does not make a determination within the 7 day determination period (which follows the 7 day public consultation period) the licence is deemed to have been granted in the form in which the application was made. It should be noted that Christmas Day, Good Friday and Bank Holidays are not included in these 7 day periods. The combination of this brief timeframe, the consequences of not making a determination within it and the unknown (but potentially significant) number of applications over a short period of time that officers consider justify the delegated authority sought in this report – as well as the fact that officers routinely determine licensing applications as part of their daily operations.
- h) A local authority can decide, when it is granting a licence, how long the licence should last for, or it can leave it open ended, in which case it will expire at the end of 30 September 2021 (unless this backstop date is extended by the Secretary of State). However, the licence must have a minimum duration of 3 months. Those licences deemed to be granted in the absence of a determination will have a default duration of 12 months – but will still expire at the end of 30 September 2021 (as per the current form of the draft legislation).
- i) The local authority can add conditions to the licence and can publish conditions which it proposes to add to pavement licences.
- j) The Secretary of State may also publish conditions.
- k) If a condition of the licence has been breached, the local authority may revoke the licence or may require steps to be taken to remedy the breach.
- l) In addition, there are further grounds for revocation of the licence, including where the furniture is giving rise to risks to public health and safety or risks causing a public nuisance.
- m) The licence can also be revoked where the person did not put up a notice to publicise the application as required, or anything in the application was false or misleading.

- n) Where a licence is granted, or deemed to have been granted, any planning permission for anything done under the licence is deemed to have been given.

### **3.0 Administration and enforcement of pavement licences**

3.1 This report requests that authority is delegated to the Group Manager for Public Health for the administration and enforcement of pavement licences (which can then be sub-delegated on to the relevant members of the Licensing Team). As the legislation is likely to be introduced at such short notice, this report does not seek to set out the specifics of how licences will be administered, but rather requests that the Group Manager for Public Health be given authority to decide and implement how this will be done.

3.2 In deciding how to administer this new licensing regime, the Council should be aware that at all times, Officers will have regard to the legislation, Government guidance, and any other relevant information that is produced by bodies such as the Local Government Association (LGA) and the Institute of Licensing (IOL). In addition to this, and where possible, the Licensing Team will draw on its experiences from administering similar licensing regimes to ensure that it runs as smoothly as possible.

3.3 In accordance with the proposed legislation, a licence once granted may be revoked for the following reasons:

- (a) some or all of the part of the relevant highway to which the licence relates has become unsuitable for any purpose in relation to which the licence was granted, or

- (b) as a result of the licence:

- (i) there is a risk to public health or safety
  - (ii) anti-social behaviour or public nuisance is being caused or risks being caused
  - (iii) the highway is being obstructed (other than by anything done by the licence-holder under the licence),

- (c) anything material stated by the licence-holder in their application was false or misleading, or

- (d) the licence-holder did not comply with the duty to place a suitably visible public notice on the premises as part of the application process

3.4 The Council may also serve a notice on the licence-holder requiring steps to be taken to remedy the breach as specified in the notice within a specific time period.

### **4.0 Fee for a pavement licence**

4.1 The Council are also asked to delegate authority to the Group Manager for Public Health for the setting of the fee for pavement licences.

- 4.2 At the time of writing this report, it is proposed to set an application fee of £100. This is the cap set within the Bill and in consideration of the work involved in introducing this new licensing regime, not to mention dealing with specific applications, it is thought that this fee will still not result in full cost recovery.
- 4.3 Delegated authority for this is requested because the Bill must still be considered in the House of Lords and the proposed charge of £100 may have to be changed.
- 4.4 In setting a fee, it is also useful to consider the fees that would have been payable prior to the introduction of this Act. The equivalent licence issued by Devon County Council would cost £200 (for the first year) and in addition to this, a licensed premises may also have had to apply to vary the Premises Licence to enable the consumption of alcohol in the outside area. This application would cost a minimum of £89.00 and is no longer required because, as covered next in this report, the Licensing Act 2003 will also be amended to provide automatic extensions to the terms of 'ON' sales alcohol licences to allow for 'OFF' sales to take place.

## **5.0 Licensing Act 2003 amendments**

- 5.1 Further to the pavement licences, which streamline the application process for using outside areas, the Act will also amend the Licensing Act 2003 to ensure that licensed premises can make use of the outside area. Each premises will have its own premises licence and set of conditions – this aspect of licensing is not for the Council.
- 5.2 However, for members' understanding, a key consideration for the use of outside areas (which may not have been previously used or identified on the licence), is whether or not the licence permits the sale of alcohol for consumption 'ON' / 'OFF' the premises. If a premises licence does not permit the sale of alcohol for consumption OFF the premises, OR, if the licence (and its plan) did not identify the outside area as an area for consumption 'ON', they would likely have needed to vary the premises licence. This is an additional cost both in relation to the application fee and the time it takes for the application to be consulted on and issued.
- 5.3 The Act will essentially provide an automatic extension to the terms of 'ON' sale alcohol licences to allow for 'OFF' sales until the end of September 2021. The default hours in which 'OFF' sales will be permitted will be the same as those in which 'ON' sales are permitted. This means that any licensee who wishes to open for longer hours would need to apply to vary the premises licence.
- 5.4 However, there are some exceptions with the proposals and as a safeguard, licensees who have had an application for an 'OFF' sales permission refused or had their 'OFF' sales permission excluded by variation or at review within the last three years, will be excluded from this licence extension.

## **6.0 Impact of changes on the local authority**

- 6.1 For information purposes, the Licensing Team currently licence a total of 358 premises (including those that sell alcohol and those that do not). It is difficult to know how many premises are planning to open as soon as restrictions are lifted and how many of those may want to apply for a pavement licence, but it is important to note that pavement licences do not just cover licensed premises. It also includes other premises that sell food and drink for consumption on or off the premises, such as coffee shops.
- 6.2 For this reason, the Licensing Team are anticipating a particularly busy period in July and August 2020 as businesses come to terms with the new arrangements, make enquires and submit applications.
- 6.3 In summary, the Licensing Team will need to (amongst other things):
- Create and set up the required forms and where necessary, make them available online (with the assistance of ICT)
  - Create and set up the required processes (including the application process, the consultation process and the relevant enforcement processes)
  - Create and implement the required conditions that will apply to licences
  - Learn and understand the new Act and its accompanying guidance, and ensure a consistent approach for the administration and enforcement of it.
- 6.4 Furthermore, the consultation process will also have an additional burden on the wider Public Health service as specific officers will likely be 'consultees', This is because they can provide specific expertise in public nuisance and health and safety.

## **7.0 Recommendations**

- 7.1 The recommendations are as follows:
1. That Council note the provisions of the Business and Planning Bill 2020.
  2. That Council delegate authority to the Group Manager for Public Health for the administration and enforcement of the provisions within the forthcoming Business and Planning Act 2020. These delegations can then be sub-delegated to relevant officers.
  3. That Council delegate authority to the Group Manager for Public Health for the setting of the fee for pavement licences.

### **Contact for any more information:**

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