

THE BUSINESS AND PLANNING BILL

Executive Summary

The Business and Planning Bill (the Bill) is being introduced to make provision in respect of the promotion of economic recovery and growth. It notably, amongst other matters, provides for pavement licences and off sales of alcohol. This report is in respect of the sections of the Bill for which authority needs to be delegated to officers.

Recommendations

The Executive is requested to:

RESOLVE That

- (i) the Director of Legal and Democratic Services be authorised to determine pavement licences;
- (ii) the Director of Legal and Democratic Services be authorised to approve the conditions attached to pavement licences; and
- (iii) the Director of Legal and Democratic Services be authorised to undertake enforcement action in accordance with s6 of the Business and Planning Bill or such section as enacted.

Reasons for Decision

Reason: To allow the effective determination and enforcement of pavement licences within the Borough.

The Executive has the authority to determine the recommendation(s) set out above.

Background Papers: [The Business and Planning Bill](#)

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1.0 Introduction

- 1.1 The Bill introduces a new legal framework for issuing pavement licences, which will enable food and drink businesses to put removable furniture on the pavement adjacent to their premises in order to sell or serve food and drink, or for people to sit at to consume food and drink. The framework supersedes the existing framework for pavement licensing set out in the Highways Act 1980, but does not impact licences already issued under that Act. It should be noted that the Bill does not allow anyone who does not already have a licence to sell alcohol to do so but allows premises to extend onto the pavements to sell or serve food and drink.
- 1.2 As at the date of writing this report, the Business and Planning Bill (the Bill) has not become law. The Bill was initially expected to become law before the pubs reopened on 4 July 2020. It is now anticipated that the Bill shall become law towards the end of July.

2.0 Pavement Licences

- 2.1 The Council will be required to process applications for pavement licences within two weeks, and a maximum fee of £100 will be payable. Each application will be subject to a seven-day consultation period, with any representations required to be considered in determining the application. The consultation process requires the applicant to display a notice of the application at the premises and the Highways Authority must be consulted. The Portfolio Holder and Ward Members will also be consulted. Licences must be for a minimum of three months and can run for any period up to an end date of 30 September 2021.
- 2.2 It is important to note that where a council does not respond to an application within two weeks, a licence will be deemed to have been granted for a year from the date of the deemed determination or 30 September 2021, whichever is the sooner. For this reason, it is important that delegations are in place to reduce the risk of deemed licences as a result of non-determination.
- 2.3 Both councils and the Secretary of State may issue conditions in relation to pavement licences: where licence conditions are breached, the council can serve an improvement notice or revoke the licence.
- 2.4 In implementing the new framework, councils will need to manage a number of potentially conflicting objectives including the need for businesses to reopen and the desire of customers to begin socialising again; the need to maintain accessibility of the highways for all users, and the possible concerns of local residents living in areas that may be affected by the extension in businesses operating outside.
- 2.5 The council can reject licence applications or revoke licences if circumstances mean that this cannot be managed safely or without causing significant detriment to residents. The relaxation of these rules will require individual business owners, local trade groups and the police to work together alongside councils, as well as responsible behaviour by customers.

3.0 Procedure

- 3.1 The Council has been supporting local hospitality businesses to reopen safely. An application process is now in place and is ready to go live once the Bill becomes law.
- 3.2 The Council has put in place a two stage procedure to ensure good internal governance. The application shall be processed by the Town Centre Highways Team who report to the Director of Neighbourhood Services. They will undertake the prescribed consultation process and consider any responses received. They will also need to work closely with Environmental Health to ensure any application submitted complies with the COVID 19

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regulations. They shall make a formal recommendation to the Director of Legal and Democratic Services who shall determine the application.

- 3.3 It is proposed that the maximum fee of £100 shall be levied for consideration of the application. Each application shall be considered upon its own merits however initially it is anticipated that a 3 month pavement licence shall be issued to cover the summer period.
- 3.4 The Council shall issue pavement licences subject to its current set of conditions for the same under the Highways Act. These shall be amended to incorporate any national conditions imposed by central government or local conditions as appropriate. These conditions include, but are not limited to, the following:-
- a. Third Party Insurance cover from a reputable company at a minimum level of £5 million;
 - b. There must be a clear route of access along the highway taking into account accessibility of disabled people and the recommended minimum footway width and distances required for access by mobility impaired and visually impaired people;
 - c. Tables and chairs will be of an approved type and kept in a good state of repair. The seating area shall be clearly designated and the furniture shall be removed when not in use and when the premise is closed for business;
 - d. The pavement licensee shall ensure that they operate in a safe manner and comply with current COVID 19 regulations and guidance; and
 - e. Where appropriate shall provide for the use of plastic glasses and containers.
- 3.5 It is requested that authority be delegated to the Director of Legal and Democratic Services to determine the conditions to be attached to the pavement licences.

4.0 Enforcement

- 4.1 If a condition imposed on a licence is breached the Council will be able to issue a notice requiring the breach to be remedied and the Council can take action to cover any costs incurred to remedy the breach. The Council may revoke a licence in the following circumstances:

For breach of condition, (whether or not a remediation notice has been issued) or where:

- There are risks to public health or safety – for example by encouraging users to breach government guidance on social distancing by placing tables and chairs too close together;
 - the highway is being obstructed (other than by anything permitted by the licence);
 - there is anti-social behaviour or public nuisance – for example, the use is increasing the amount of noise generated late at night and litter is not being cleaned up;
 - it comes to light that the applicant provided false or misleading statements in their application – for example they are operating a stall selling hot food and had applied for tables and chairs on which drinks could be consumed; or
 - the applicant did not comply with the requirement to affix the notice to notify the public for the relevant period.
- 4.2 The Council may also revoke the licence where all or any part of the area of the relevant highway to which the licence relates has become unsuitable for any purpose for which the

licence was granted or deemed to be granted. For example, the licensed area (or road adjacent) is no longer to be pedestrianised. It is requested that authority be delegated to the Director of Legal and Democratic services to undertake the abovementioned enforcement.

5.0 Off Sales

- 5.1 The Bill will also amend the Licensing Act 2003 so that any premises with licences which currently only permit drinks to be consumed on the premises will be permitted to allow sales for consumption off the premises. The default extension will not however apply to premises which in the last three years have been refused permission for an off-sales licence, or have had this permission revoked. The draft Bill only lists premises licences not club premises certificates therefore it is not anticipated that the automatic entitlement to off sales shall apply to clubs or anything with a club licence such as a Working Man's Club.

6.0 Implications

Financial

- 6.1 Pavement licences are presently granted under Part 7A of the Highways Act 1980. The licence fee differs from licence to licence but is usually greater than £100. The new process provides a cheaper, easier and quicker way for businesses to obtain a licence. It is anticipated that current licence holders may request a refund of their existing licence fee and will use this regime in future applications paying the lower fee.

Human Resource/Training and Development

- 6.2 Inevitably there will be additional demands on officer time which shall be met from existing resources.

Community Safety

- 6.3 Community safety shall be considered in the application process.

Risk Management

- 6.4 The application for a pavement licence must be determined within 14 days. If it is not, by default, a licence is granted until September 2021. For this reason, delegated authority has been requested to allow applications to be determined within the requisite timeframe.

Sustainability

- 6.5 None identified in the report.

Equalities

- 6.7 Accessibility shall be considered in the application process. It is a condition of any pavement licence that clear routes of access along the highway must be 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.

Safeguarding

- 6.8 None identified in the report.

REPORT ENDS