

# **WAVERLEY BOROUGH COUNCIL**

## **EXECUTIVE**

**28 JULY 2020**

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**Title:**

### **Pavement Licensing**

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**Portfolio Holder: Cllr. Nick Palmer Portfolio Holder for Operational and Enforcement Services**

**Head of Service: Richard Homewood, Head of Environmental & Regulatory Services**

**Key decision: Yes**

**Access: Public**

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## **1. Purpose and summary**

- 1.1 The Government is rushing through Parliament a new streamlined process to apply for a "Pavement Licence". This temporary authorisation will short-circuit the usual suite of consents required under the Highways Act and planning law. The purpose of the new licence is to help the struggling hospitality sector in a time of social distancing.
- 1.2 It is proposed that this new procedure will be administered by district and borough councils in non-unitary Councils and Waverley will therefore need to adopt a policy, set the fee and delegate to officers the authority to issue, amend and or refuse licences, and deal with enforcement.
- 1.3 This report therefore proposes a policy for Waverley Borough Council attached at Annexe A, a fee level and seeks delegation to officers for the issue, amendment and or refusal of licenses, as well as enforcement of the new arrangements.
- 1.4 This report also advises on changes to the licensing laws which will allow premises with a premises licence for on-sales of alcohol to sell off-sales without the need to apply for a formal variation to their licence in the usual way.

## **2. Recommendation**

- 2.1 That the Executive:
  1. Adopts the policy set out in Annexe A.
  2. Sets the fee for a pavement licence at £100.
  3. Delegates authority to the Head of Environmental and Regulatory Services to issue pavement licences and/or authority to refuse or amend pavement licences in consultation with the Portfolio holder for Operational and

Enforcement Services.

4. Delegates authority to Head of Environmental and Regulatory Services in relation to enforcement powers under the new proposed legislation (the Business and Planning Act 2020 once enacted).
5. Delegates authority to the Head of Environmental and Regulatory Services to make minor or consequential amendments to the Policy and Licence conditions following the Business and Planning Bill becoming law, and in the event of any amendments/updating statutory instruments and or government guidance in consultation with the Portfolio Holder for Operational and Enforcement Services.

### **3. Reason for the recommendation**

- 3.1 To have a clear policy and standard conditions for pavement licensing and enable the efficient and timely administration of the licensing and enforcement procedures for pavement licensing to support the revitalisation of the hospitality industry.

### **4. Background**

- 4.1 On 25 June 2020, the Government published the Business and Planning Bill which intends to make two significant licensing changes to help businesses recover from the disruption caused by Covid-19 and to support them in implementing safer ways of working, in particular the need for social distancing. The Bill as drafted makes it easier for cafés, bars, restaurants and public houses in England and Wales to seat and serve customers outdoors through temporary changes to licensing law and outdoor seating/furniture. It introduces;
  - a new (temporary) "**pavement licence**" to be issued by district, borough and London borough councils authorising the use of the public highway by pubs, cafes, bars and restaurants; and
  - any premises holding a licence authorising on-sales of alcohol is deemed to also authorise **off-sales**.
- 4.2 The Bill completed all three stages in the House of Commons on 29 June 2020 and is expected to be made law very shortly.,The second reading (the general debate on all aspects of the Bill) – took place on 6 July 2020 with minor proposed amendments and the Committee stage (House of Lords) Is programmed for 13 July.
- 4.3 At the time of preparation of this report, it is understood that the report stage and third reading in the House of Lords will take place on 20 July. It is thought that the House of Lords will send the Bill back on 20 July in the hope that the House of Commons will approve this before summer recesss (on 22 July). Once a bill has completed all the parliamentary stages in both Houses, it is ready to receive Royal Assent – when the Queen will agree to make the bill into an Act of Parliament (law) – a formality.
- 4.4 Details for all stages of the passage of the Bill some of which will occur following

preparation and publishing of this report can be found at

<https://services.parliament.uk/Bills/2019-21/businessandplanning/stages.html>

It is proposed at this stage that subject to the bill proceeding as set out above, a short update can be provided to the Executive. It is hoped that the recommendation that any minor and consequential amendments be made to the policy and procedure – as set out above will be acceptable - to ensure a timely offering and implementation of the anticipated arrangements.

### **Pavement Licences**

- 4.6 On 20 March 2020, the Prime Minister announced that cafés, pubs, bars and restaurants should close. Emma McClarkin, Chief Executive of the British Beer and Pub Association (BBPA), said that the pandemic “has been devastating for the pub sector”. In a Commons statement on 23 June 2020, the Prime Minister announced that pubs and restaurants could re-open from 4 July 2020. Guidance for business re-opening is available on Gov.UK.
- 4.7 The Bill includes temporary measures to support businesses selling food and drink through economic recovery as lockdown restrictions are lifted but social distancing guidelines remain in place.
- 4.8 Once cafés, pubs and restaurants are permitted to open, current social distancing guidelines will have considerable impact on the capacity to accommodate customers.
- 4.9 The measures set out within the Bill are designed to support businesses selling food and drink such as cafés, public houses and restaurants by introducing a temporary fast-track process for these businesses to obtain permission, in the form of a “pavement licence”, from the local council for the placement of furniture such as tables and chairs on the pavement outside their premises.
- 4.10 This will enable them to maximise their capacity whilst adhering to social distancing guidelines. The current process for businesses to obtain these permissions (under the Highways Act and operated by Surrey County Council) can be costly and time-consuming, with a longer consultation period of 28 days.
- 4.11 The Bill as drafted includes temporary measures to place a cap on the application fee for businesses, enforcement and revocation powers so councils can protect public safety and amenity, and introduces a new 14-day determination period, ensuring that businesses can obtain licences in a timely and cost effective manner aiding to their financial recovery. In addition, allowing representations to be made by consultees and the public on the basis of matters such as nuisance and amenity.
- 4.12 Licensing Officers across Surrey have been liaising with Surrey County Council and have developed a draft policy and licence conditions for use by all district and borough councils to ensure consistency of approach. This draft policy is attached at Annexe A and is recommended for adoption by the Executive.
- 4.13 The Bill caps the licence fee at a maximum of £100 to minimise the effect on

businesses whilst recovering some of the cost of setting up and administering the new licences, including an element of enforcement along with other agencies. Most local authorities are setting the fee at £100 and the Executive is recommended to do so for Waverley.

- 4.14 The Bill also introduces reduced timescales for processing and approving applications and delegation of the authority to issue licences to officers is essential otherwise applications will be deemed to be approved if the deadlines are not met. Where it is likely that a licence should be refused it is recommended that this is delegated to officers in consultation with the relevant portfolio holder.

### **Off-sales**

- 4.15 The measures included in the Bill modify provisions in the Licensing Act 2003 to provide automatic extensions to the terms of on-sales alcohol licences to allow for off-sales. It is designed to be a temporary measure to “boost the economy”, with provisions lasting until the end of September 2021, with ‘a sunset clause’.
- 4.16 The measures will make it possible for licensed premises that have only an on-sales licence to sell alcohol for consumption off the premises. This will allow businesses to trade whilst keeping social distancing measures in place.
- 4.17 The provisions in relation to those licensed premises at paragraph 4.12 above remove the need for any application for a variation to the licence to be made, therefore no fee will need to be paid. This is designed to deliver savings to businesses, as well as providing them with certainty about how they are able to trade. It will also reduce the burden on local authorities and the police, who will not need to scrutinize any applications for licence variations from those premises affected by these measures.
- 4.18 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. This is a safeguard to ensure that where it has recently been decided that the licensee should not have the permission, they do not receive it through this legislation.
- 4.19 The default hours in which off-sales will be permitted will be the same as those in which on-sales are permitted. Any licensee who wishes to open for longer hours could apply for a licence variation.
- 4.20 The provisions will also apply temporary conditions to licences where there is a pre-existing permission for off-sales.
- 4.21 The conditions will set the hours of off-sales to match those for on-sales, allow off-sales of alcohol in open containers and allow deliveries of alcohol to residential or work buildings. Those conditions will suspend existing conditions that are more restrictive. So, for example, an existing condition that allowed off-sales only in closed containers would be suspended to allow sales in open containers.
- 4.22 If there were problems of crime and disorder, public nuisance, public safety or the protection of children arising from how the premises operated using the new permission, any responsible authority, including the police or environmental health,

could apply for a new off-sales review. The off-sales review process is modelled on the existing summary review process. In the event that an off-sales review is triggered, it will only relate to off-sales authorised by virtue of these provisions, or conditions which have effect by virtue of these provisions: it cannot be used to revoke the existing licence or modify pre-existing licence conditions.

## **5. Relationship to the Corporate Strategy and Service Plan**

- 5.1 The Recommendations of this report will help support the Strategies aims to support a thriving local economy, supporting local businesses and employment whilst striking a balance with the aim of having a sense of responsibility for our environment .

## **6. Implications of decision**

### **6.1 Resource (Finance, procurement, staffing, IT)**

- 6.1.1 Income from licence fees will assist in covering the costs of setting up and administering the new licensing regime.

### **6.2 Risk management**

- 6.2.1 Failure to process and determine applications in a timely manner would lead to a number of deemed approvals with less control over their impact on the environment or the community.

### **6.3 Legal**

- 6.3.1 Legal commentary is provided throughout the body of the report.

### **6.4 Equality, diversity and inclusion**

- 6.4.1 A public sector equality duty assessment has been undertaken by the Government in relation to the proposed legislation, and is adopted by the Council in relation to the inspection of document, pavement licensing and alcohol licensing provisions to which this report refers

The document can be found here

<https://publications.parliament.uk/pa/bills/cbill/58-01/0148/PSED%20and%20Family%20Test%20-%20Business%20and%20Planning%20Bill.pdf>

### **6.5 Climate emergency declaration**

- 6.5.1 The proposed policy and licence conditions take into consideration the need to reduce carbon emissions and the aspirations of the Climate Change and Sustainability Strategy.

## **7. Consultation and engagement**

Consultation on the proposed policy, conditions and fees etc. with Licensing Managers at Councils across Surrey, SCC Highways, Surrey Police, WBC Planning Team, WBC Environmental Health. The proposed application procedure also requires a period of consultation.

## **8. Other options considered**

- 8.1 The council is to be required to implement and administer the proposed new pavement licensing scheme.

## **9. Governance journey**

- 9.1 Report for Executive Briefing  
Report to Executive for approval of policy, fee and delegations to officers.

### **Annexes:**

Annexe A – draft pavement licensing policy and conditions

### **References**

The [Business and Planning Bill](#)

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Agreed and signed off by:

Legal Services: date 09 July2020 GCJ

Head of Finance: date

Strategic Director: date

Portfolio Holder: date

**Draft Pavement Licensing Policy**