

WAVERLEY BOROUGH COUNCIL

COUNCIL

11 AUGUST 2020

Title:

Business and Planning Act 2020 - Pavement Licensing (outdoor seating) and alcohol licensing : temporary off sales permissions

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

1. Purpose and summary

- 1.1 The Government has swiftly introduced through Parliament a new streamlined process to apply for a "Pavement Licence". After proceeding through the Commons and Lords stages, on 21 July, the Commons accepted all amendments proposed by the Lords and the legislation came into force. This temporary authorisation short-circuits 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 Council areas 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, which are limited to 11pm at the latest and new permissions for off-sales do not apply to times when the premises licence does not allow sales of alcohol for consumption in outdoor areas of the premises.

2. Recommendation

The Licensing & Regulatory Committee RECOMMENDS that Council:

- i. **Adopts the policy set out in Annexe A**
- ii. **Sets the fee for a pavement licence at £100**
- iii. **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 Chairman of the Licensing and Regulatory Committee.**
- iv. **Delegates authority to Head of Environmental and Regulatory Services in relation to enforcement powers under the new legislation (The Business and Planning Act 2020).**
- v. **Delegates authority to the Head of Environmental and Regulatory Services to make minor or consequential amendments to the Policy and Licence conditions in the event of any amendments/ updating statutory instruments and/or government guidance in consultation with the Chairman of the Licensing and Regulatory Committee.**

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 21 July 2020, the Business and Planning Act 2020 was passed which makes 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 new Act 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 for removable seating; and
- any premises holding a licence authorising on-sales of alcohol is deemed to also authorise **off-sales** subject to a cut off time of 11pm or the closure time of an existing outside area, whichever is the earlier. It is envisaged that these arrangements will be in place until 30 September 2021 and extensions to provisions can only be made where it is deemed reasonably necessary or appropriate for a purpose linked to the coronavirus pandemic.

Pavement Licences (outdoor seating)

- 4.2 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.

- 4.3 The Business and Planning Act 2020 was enacted and 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
- 4.4 As cafés, pubs and restaurants are now permitted to open, current social distancing guidelines will have considerable impact on the capacity to accommodate customers.
- 4.5 The measures set out within the new Act 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 removable furniture such as tables and chairs on the highway adjacent to their premises. This process has been introduced to assist businesses to secure licences in time for the summer.
- 4.6 This will enable them to maximise their capacity whilst adhering to social distancing guidelines and assist to protect hospitality jobs. The current process for businesses to obtain these permissions (under Part 7A of the Highways Act 1980 and operated by Surrey County Council) can be costly and time-consuming, with a longer consultation period of 28 days.
- 4.7 The Act 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 (excluding public holidays), ensuring that businesses can obtain licences in a timely and cost effective manner aiding to their financial recovery, whilst, allowing representations to be made by consultees and the public on the basis of matters such as nuisance and amenity. There are additional safeguards in that authorities must have regard to the needs of disabled people when considering whether to grant a pavement licence and licence holders must also make reasonable provision for outside seating where smoking is not permitted. There are national mandatory condition requirements in relation to pavement licences, including a no-obstruction condition so that the licence must not have the effects set out in section 3(6) of the Act. The second is a national no smoking seating area condition which seeks to ensure customers have greater choice and businesses can cater to their customer’s preferences.
- 4.8 Licensing Officers across Surrey have been liaising with Surrey County Council and have developed a draft policy and local 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 Council. The Act also sets out two conditions which apply to pavement licences which are granted or deemed to be granted which are a no-obstruction condition and a smoke – free seating condition which will apply to licences granted under the Business and Planning Act 2020 (not existing licences permitted under the Highways Act mentioned above or other legislation). In addition, businesses must continue to have regard to smoke free legislation under the Heath Act 2006 and regulations.

- 4.9 The Act 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 Council is recommended to do so for Waverley.
- 4.10 The Council 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.
- 4.11 The Government has issued guidance on pavement licences (22 July) and which is available (and will likely be subject to further updating) at:

<https://www.gov.uk/government/publications/pavement-licences-draft-guidance>

Off-sales

- 4.12 The measures included in the Act modify provisions in the Licensing Act 2003 to provide automatic extensions to the terms of on-sales alcohol licences to allow for off-sales, subject to a cut off time It is designed to be a temporary measure to “boost the economy”, with provisions lasting until the end of September 2021,
- 4.13 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.
- 4.14 The provisions in relation to those licensed premises at paragraph 4.13 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.
- 4.15 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.
- 4.16 The default hours in which off-sales will be permitted are limited to 11pm or the closure of an existing outside area (whichever is the earlier). Measures also temporarily suspend existing licence conditions in so far as they are inconsistent with the new off sales permission.
- 4.17 Conditions on existing dual premises licence (allowing on and off sales) that would prevent one or more of the following are also suspended under the temporary off sales provision: (i) off-sales of alcohol at a time when the premises are open for selling alcohol for consumption on the premises (subject to cut off time); (ii) off sales in an in open container; and (iii) allow deliveries of alcohol to residential or

work buildings.

- 4.18 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 summary off-sales review. The off-sales review process is modelled on the existing summary review process. In the event that a new 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.
- 4.19 The Home Office has published (on 22 July) guidance 'Alcohol licensing : guidance on new temporary off-sales permissions which is available at:'

<https://www.gov.uk/government/publications/guidance-for-temporary-alcohol-licensing-provisions-in-the-business-and-planning-bill>

5. Relationship to the Corporate Strategy and Service Plan

- 5.1 The Recommendations of this report will help support the Strategy's 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 accordance with Section 149 of the Equality Act 2010 which places duties on local authorities, to have due regard to: the need to eliminate unlawful discrimination, advance equality of opportunity between people who share a protected characteristic and those who don't and foster or encourage good relations between people who share a protected characteristic and those who don't. It is noted that the legislation makes provision for the Council to have regard to the needs of disabled people when considering whether to grant a

pavement licence and the legislation confirms that the licence must not have the effects set out in section 3(6) of the Act.

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.
- 6.5.2 The pavement licence arrangements require licence holders to make reasonable provision for outside seating where smoking is not permitted. Businesses must continue to have regard to smoke free legislation under the Health Act 2006, and the subsequent Smoke Free (Premises and Enforcement) Regulations 2006.

7. Consultation and engagement

- 7.1 Consultation on the proposed policy, conditions and fees etc. has been undertaken with Licensing Managers at Councils across Surrey, SCC Highways, Surrey Police, WBC Planning Team, and WBC Environmental Health.
- 7.2 The legislation and proposed application procedure also requires a period of consultation. (7 days not including public holidays)

8. Other options considered

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

9. Governance journey

- 9.1 Report for Licensing & Regulatory Committee, 30 July 2020.
Recommendation to Council for approval of policy, fee and delegations to officers

Annexes:

Annexe A – draft pavement licensing policy and conditions

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Agreed and signed off by:
Legal Services: date 22 July2020 GCJ
Head of Finance: date
Strategic Director: date
Portfolio Holder: date