

Licensing Committee Report
Ward(s) affected: All Wards
Report of the Director of Service Delivery
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Business and Planning Act 2020

Executive Summary

The Business and Planning Act 2020 introduced on 22 July seeks to assist the hospitality industry recover from the Covid19 'lockdown' by making it easier for premises serving food and drink such as bars, restaurants and pubs to seat and serve customers outdoors through temporary changes to planning procedures and alcohol licensing.

Recommendation Committee

That the Committee notes the implications of the Business and Planning Act for the Licensed trade, and approves the draft Pavement Licensing Policy 2020 -2021 at Appendix A.

Reason(s) for Recommendation:

Approval of the policy will assist the Council with consistent decision making and provide guidance for applicants.

Is the report (or part of it) exempt from publication?

No

1. Purpose of Report

- 1.1 The purpose of this report is to brief the Licensing Committee on the implications of the Business and Planning Act (the Act), which came into force on 22 July 2020, and to approve a Policy for determining Pavement Licence applications issued under the Act.

2. Strategic Priorities

2.1 The Pavement Licensing Policy will contribute to our fundamental themes as follows:

- **Place making** – regenerating and improving Guildford town centre through well-regulated licensed establishments.
- **Community** – enhancing sporting, cultural, community and recreational facilities.
- **Innovation** – Encouraging sustainable and proportionate economic growth to help provide the prosperity and employment that people need.

3. Background

3.1 On 25 June, the Government announced relaxations to planning and licensing laws to help the hospitality industry recover from the coronavirus lockdown. The Business and Planning Act received Royal Assent on 22 July and came into force immediately. It introduced measures to make it easier for premises serving food and drink such as bars, restaurants and pubs to seat and serve customers outdoors through temporary changes to planning procedures and alcohol licensing.

3.2 Automatic 'off sales' entitlement

3.2.1 Under the Licensing Act 2003, premises are licensed for the sale of alcohol for consumption either 'on' the premises, 'off' the premises or both. 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. This is a temporary measure to boost the economy, with provisions lasting until the end of September 2021.

3.2.2 These measures will make it possible for licensed premises that have only an on-sales licence to sell alcohol for consumption 'off' the premises without making an application or paying a fee. This will allow businesses to trade whilst keeping social distancing measures in place inside.

3.2.3 Premises which 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.

3.2.4 The default hours in which off-sales will be permitted will be the same as those in which on sales are permitted, although there is a terminal hour for the automatic entitlement of 23:00 hours. Any premises wishing to open for longer hours must still apply for a licence variation.

3.2.5 The provisions will also apply temporary conditions to licences where there is a pre-existing permission for off-sales. 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. Existing conditions that are more restrictive will be suspended. So, for example, an existing condition that allowed off-sales only in closed containers would be suspended to allow sales in open containers.

3.2.6 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.

3.3 Pavement Licence

3.3.1 The Act also introduces a new, temporary, fast-track process for these businesses to obtain permission, in the form of a “pavement licence”, from the Council for the placement of furniture such as tables and chairs on the pavement outside their premises which will enable them to maximise their capacity whilst adhering to social distancing guidelines.

3.3.2 Currently, tables and chairs permissions are granted as Pavement licences by Surrey County Council, the Highways Authority, under Part 7A of the Highways Act 1980. The fee varies between local authorities and there is a time consuming 28-day consultation period.

3.3.3 The new temporary measure places a cap on the application fee for businesses, and introduces a new 14-day determination period, ensuring that businesses can obtain licences in a timely and cost effective (for the business) manner aiding to their financial recovery. The cost of the permission is capped at £100. The temporary permissions will last until 30 September 2021. There are enforcement powers contained in the Act to enable the Authority to attach conditions, and revoke licences for breaches of conditions, or if the highway is no longer suitable for this use.

3.3.4 In order to provide guidance for applicants and a framework for consistent decision making, a Policy concerning the Pavement Licensing function has been drafted and consulted upon with key stakeholders. The Policy is attached to this report as Appendix A. The Committee is asked to approve this Policy.

4. Consultations

- 4.1 The Policy covers the temporary permissions for Pavement Licences under the Business and Planning Act 2020, which are scheduled to expire on 30 September 2021.
- 4.2 As the Business and Planning Act has been passed quickly, it has not been possible to undertake public consultation on the policy in time to be ready to accept applications for pavement licences. The Policy has been drafted in consultation with the consultees listed in section 3.3 of the Policy and consulted upon with the appropriate lead councillors and the Leader of the Council.
- 4.3 The Policy will be reviewed from time to time should changes occur in relevant legislation, the nature of Pavement licences generally, relevant social distancing measures or as a result of local considerations within the Borough.

5. Key Risks

- 5.1 Not having a Policy concerning Pavement Licensing may lead to inconsistent decision making and potential challenge to the Council.

6. Financial Implications

- 6.1 The Business and Planning Act has been introduced to support the hospitality industry to recover from the coronavirus pandemic. Many of these businesses are licence fee payers under the Licensing Act 2003.
- 6.2 There are no immediate financial implications in the entitlement for premises to undertake 'off' sales, this is an automatic entitlement and the Council does not have to issue another licence.
- 6.3 The application fee for Pavement Licensing is capped by legislation at £100. The fee has been approved by the Regulatory Services Manager, in consultation with the Director of Resources using delegated powers.
- 6.4 The Licensing Service has had to divert significant officer time in order to set up the new responsibility. It is anticipated that the Council may receive 20-30 applications in the period during which the Business and Planning Act has effect, generating additional income of £2,000 to £3,000. It is unlikely that the cost of setting up the function, processing of applications and enforcement of licences will be recovered through the fee.
- 6.5 The Local Government Association has been lobbying for Councils to receive a 'new burdens' payment for Pavement Licensing, although this is yet to be confirmed.

7. Legal Implications

- 7.1 There is no statutory requirement to have a Pavement Licensing Policy, although having a transparent Policy guides applicants and enables consistent decision making.

8. Human Resource Implications

- 8.1 The introduction of the new 'pavement licence' administered by Guildford Borough Council has required the Licensing Service to divert resource into setting up and administering this regime.

9. Equality and Diversity Implications

- 9.1 Under the public sector equality duty as set out in the Equality Act 2010, public authorities are required to have due regard to the need to eliminate unlawful discrimination, harassment and victimisation as well as advancing equality of opportunity and fostering good relations between people who share a protected characteristic and those who do not.
- 9.2 The protected grounds covered by the equality duty are: age, disability, sex, gender reassignment, pregnancy and maternity, race, religion or belief, and sexual orientation. The equality duty also covers marriage and civil partnership, but only in respect of eliminating unlawful discrimination.
- 9.3 The law requires that this duty to have due regard be demonstrated in decision making processes. Assessing the potential impact on equality of proposed changes to policies, procedures and practices is one of the key ways in which public authorities can demonstrate that they have had due regard to the aims of equality duty.
- 9.4 The Act requires authorities to have regard to the needs of disabled people when considering whether to grant a pavement licence. Adopting a Policy will assist in this decision making.

10. Climate Change/Sustainability Implications

- 10.1 Potential effects of litter arising from an increase in outside food and beverage consumption can be managed via conditions attached to Pavement Licences. The Act requires Licence holders to make reasonable provision for outside seating where smoking is not permitted.

11. Summary of Options

- 11.1 After considering the report, the Committee may either:
- Approve the draft Policy at Appendix A, or
 - Approve the draft with amendments.

12. Conclusion

- 12.1 The Covid-19 pandemic has affected businesses across the economy causing many to cease trading for several months while others have had to significantly modify their operations. Additionally, many will not reopen following closure.
- 12.2 For the hospitality industry the measures in the Business and Planning Act will provide some much-needed flexibility as they seek to reopen fully under social distancing requirements.
- 12.3 The relaxation of licensing requirements to assist businesses in increasing their 'outdoor' offerings so as to maximise capacity whilst maintaining social distancing is unlikely to reduce complaints about noise and other anti-social behaviour which the Council and Police investigate and respond to.
- 12.4 The new Pavement Licence administered by the Council and not the Highways Authority will also place additional responsibility on the Council, at the same time as improving local control of venues providing 'alfresco' dining.

13. Background Papers

- 13.1 [The Business and Planning Act](#)
- 13.2 [Ministry of Housing, Communities and Local Government - Guidance: Pavement Licences](#)
- 13.3 [Home Office - Guidance for temporary alcohol licensing provisions in the Business and Planning Bill](#)

14. Appendices

Appendix A – Draft Guildford Borough Pavement Licensing Policy 2020-21

Please ensure the following service areas have signed off your report. Please complete this box and do not delete.

| Service | Sign off date |
|--------------------------------|-----------------------|
| <i>Finance / S.151 Officer</i> | <i>18 August 2020</i> |
| <i>Legal / Governance</i> | <i>23 July 2020</i> |
| <i>HR</i> | <i>23 July 2020</i> |
| <i>Equalities</i> | <i>23 July 2020</i> |
| <i>Lead Councillor</i> | <i>30 July 2020</i> |
| <i>CMT</i> | <i>30 June 2020</i> |
| <i>Committee Services</i> | <i>23 July 2020</i> |