

Business and Planning Act 2020: Licensing Implications

Summary:

The purpose of this report is to brief members of the Licensing Committee on the implications of the Business and Planning Act 2020 which received Royal Assent on the 22nd July and to seek a delegation of powers to enable the licensing provisions contained within the Act to be implemented.

Recommendation

The Committee is asked to RESOLVE that

- (i) authority be delegated to the Executive Head of Community to determine any application for a pavement licence made in accordance with the Business and Planning Act 2020;
- (ii) authority be delegated to the Executive Heads of Community, Regulatory and Transformation with regards to the remaining licensing provisions in the Act, including enforcement;
- (iii) The fee for the Pavement Licence be set at £100.
- (iv) The Guidance to Businesses, attached at Annex A, be noted

The Committee is also asked to confirm

- (a) arrangements for determining any appeals made against the decisions made at recommendation (i) above.

1. Background

- 1.1 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.
- 1.2 On 25 June 2020, The Government announced relaxations to planning and licensing laws to help the hospitality industry recover from the coronavirus lockdown. The Business and Planning Act 2020 (The Act) proposes 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.
- 1.3 For the hospitality industry these measures will provide some much-needed flexibility as they seek to reopen fully under social distancing requirements from 4 July 2020.

1.4 The Business and Planning Act 2020 received Royal Assent on the 22nd July. Part 1 of the Act, provisions relating to Pavement Licences and Alcohol licensing came into force on the same day.

2. Licensing Provisions in the Business and Planning Act

2.1 The Act sets out two significant changes to licensable activities:

- i. It transfers authority to grant pavement licences from the Highways authority to the Borough Council and reduces the timescales for the approval of any applications. It is proposed that these arrangements will come to an end in September 2021 unless extended.
- ii. It modifies provisions in the Licensing Act 2003 to provide automatic extensions to the terms of on-sales alcohol licences to allow for off-sales. These extensions only apply up to 11pm where the Premises Licence allows this. Where a Premises Licence has an earlier cut-off time, off sales must end at this earlier time.

Pavement Licences

2.2 Currently, permission for businesses to place tables and chairs outside their premises on the public highway is granted by Surrey County Council, in its capacity as the Highways Authority. This takes the form of a permit ('pavement licence') issued under Part 7A of the Highways Act 1980. The fee for a 'Pavement Licence' varies between local authorities and there is a time consuming 28 day consultation period that must be adhered to before a decision can be made on whether or not to grant a licence.

2.3 The Act introduces a new, temporary, fast-track process for these businesses to obtain permission, in the form of a "pavement licence", from Surrey Heath Borough 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 still adhering to social distancing guidelines.

Application Process

2.4 Under the Act, an application for a Pavement Licence must be made in writing in a form specified by the local authority and must:

- i. specify the premises, the part of the relevant highway and the purpose or purposes specified below to which the application relates:
 - a) use of the furniture by the licence-holder to sell or serve food or drink supplied from, or in connection with relevant use of, the premises;
 - b) use of the furniture by other persons for the purpose of consuming food or drink supplied from, or in connection with relevant use of, the premises.
- ii. specify the days of the week on which, and the times of day between which, it is proposed to put furniture on the highway,
- iii. describe the type of furniture to which the application relates,

- iv. specify the date on which the application is made,
- v. contain or be accompanied by such evidence of public liability insurance in respect of anything to be done by the licence-holder pursuant to the licence as the authority may require, and
- vi. contain or be accompanied by such other information or material as the local authority may require.

A draft of the proposed application form is attached to this report as Annex B.

2.5 To ensure that businesses can obtain Pavement Licences in a timely and cost effective (for the business) manner aiding to their financial recovery, the Act places an onus on the local authority to determine the application within 14 days which must begin with the day after that on which the application is made.

2.6 It should be noted that, an application for a Pavement Licence is deemed to have been made on the day it is sent to the local authority by the applicant.

Public Consultation on an Application

2.7 Within this determination period of 14 days, provision must be made for a public consultation period of 7 days, which must begin with the day after that on which the application is made.

2.8 Christmas Day, Good Friday and any day which is a bank holiday is not included in the consultation period or the determination period.

2.9 On receipt of an application the Council must:

- i. Publish the application and any material requested as part of the application
- ii. Publicise the fact that representations relating to the application may be made to the authority during the public consultation period (indicating when this period comes to an end)

2.10 It is proposed that the Council will publish applications on our website with information on how to make representations.

2.11 Under the terms of the Act, the applicant must:

- i. On the day that the application is made fix a notice (Site Notice) of the application to the premises so that the notice is readily visible to, and can be read easily by, members of the public who are not on the premises, and
- ii. Secure the Site Notice so that it remains in place until the end of the public consultation period.

2.12 The Site Notice must:

- i. be in a form specified by the local authority
- ii. state that an application has been made, the date on which it was made and the date that the public consultation period will end.
- iii. State that representations relating to the application may be made to the local authority during the consultation period and
- iv. Contain any other information or material as the local authority may require.

Determination of Applications

2.13 When determining an application, the local authority must:

- i. Take into account any representations received during the public consultation period
- ii. Consult the relevant highway authority
- iii. Consult any other persons that are considered appropriate.

2.14 In making its decision, the local authority can either grant a pavement licence or chose to reject the application. If a decision is made to grant the licence then the licence can be granted subject to a) any or all of the purposes in relation to which the application is made; (b) some or all of the part of the relevant highway specified in the application

2.15 The local authority can grant a licence subject to such conditions as it considers reasonable and a proposed set of standard licensing conditions are set out in the draft Guidance for Businesses attached as annex A to this report.

2.16 It should be noted that if the local authority does not make a decision on an application by the end of the 14 day determination period outlined at paragraph 2.5 above then the licence for which the application was made is deemed, under the Act, to be granted.

Duration of Licence

2.17 The Act states that a pavement licence may be granted by a local authority for:

- (a) For such period as the local authority may specify in the licence, or
- (b) With no limit on its duration, in which case it expires at the end of 30 September 2021.

If a decision is made to specify a shorter time period as set out at paragraph 2.16(a) above the period specified:

- a) May not be less than three months, and
- b) May not extend beyond 30 September 2021

- 2.18 Where a pavement licence has been deemed to be granted as per paragraph 2.15 above then the licence will last for a period of one year starting with the first day after the determination period or at the end of 30 September 2021 whichever comes sooner.

Cost of Licence

- 2.19 Although it is envisaged that the resources required to process an application is likely to cost in excess of £100 the maximum licence fee allowed under the Act is £100. It is therefore proposed that the licence fee be set at £100.

Right of Appeal

- 2.20 The Act makes no provisions to enable businesses to appeal against a decision not to grant a Pavement Licence. Notwithstanding this, it is considered that to not have an appeal process would go against the tenets of natural justice.
- 2.21 Appeals under the Licensing Act 2003 are currently heard by a three member sub-committee of the Licensing Committee. In view of the tight 10 working day deadline that the Government has set for determination of applications this approach is considered unnecessarily cumbersome and would take up valuable time in the process. It is therefore proposed that any appeals against a decision should be dealt with in the same way as other complaints namely through an appeal to the Executive Head of Business.

Enforcement

- 2.22 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. It is anticipated that there would be some enforcement required as businesses seek to adjust to the new regime. It is proposed that these enforcement powers be delegated to the appropriate sections of the Council including, but not limited to, Environmental Health, Community development (Anti-Social Behaviour) and Corporate Enforcement etc.

Automatic 'off sales' entitlement

- 2.23 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.
- 2.24 The 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. A more detailed briefing on this aspect of the Act will be circulated separately to members.

3. Delegated Authorisation

- 3.1 The announcement of a new pavement licence administered by borough and district councils and not the Highways Authority requires that Borough Councils will need to be ready to accept, consult on and determine these applications from 22nd July.
- 3.2 To ensure that the Council was best placed to react appropriately to the introduction of these changes an Urgent Action was agreed on XXX so that the proposed recommendations could be enacted in advance of the Act becoming law. A copy of this Urgent Action is attached at Annex C.
- 3.3 The introduction of automatic 'off sales' entitlement is a modification of the Licensing Act 2003 and under the Council's Constitution the Executive Head: Community has delegated authority to make decisions in relation to the Licensing Act 2003 and any subsequent legislation that affects it.

4. Resource Implications

- 4.1 The Licensing Service is currently working to be ready to receive applications for pavement licences as part of the wider work to be ready for the reopening of the licensed trade as lockdown restrictions are eased. This work is almost complete =.
- 4.2 The introduction of the new 'pavement licence' administered by Surrey Heath Borough Council however is likely to require the Council to divert significant officer resources into setting up and administering this regime. A draft Guidance note for businesses has been compiled, and is attached as Annex A. Officers are working to set up application and consultation procedures.
- 4.3 No other immediate action is required to allow premises to undertake 'off sales, this is an automatic entitlement and the Council does not have to issue another licence.

5. Options

- 5.1 The Council is required to determine applications made in accordance with this Act so there are no substantial alternative options for the Committee to make, although alternative decisions could be taken on the decision maker and the level of fee charged.

Annexes	Annex A – Guidance for Businesses Annex B – Draft Application form Annex C – Urgent Action
Background Papers	Business and Planning Act 2020
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