

**NEWCASTLE-UNDER-LYME BOROUGH COUNCIL**

**EXECUTIVE MANAGEMENT TEAM'S  
REPORT TO**

**Licensing and Public Protection Committee**  
**04 August 2020**

**Report Title:** Business and Planning Act 2020

**Submitted by:** Head of Environmental Health

**Portfolios:** Finance & Efficiency

**Ward(s) affected:** All

**Purpose of the Report**

To inform members of the new Business and Planning Act 2020 which places a responsibility for the processing and issuing of pavement licenses to the Council and make amendments regarding alcohol off-sales.

**Recommendation**

**That Members:**

- 1. Agree the standard duration to be granted for pavement licenses to be for 1 year or to expire on 30<sup>th</sup> September 2021 or whichever is the soonest.**
- 2. Agree to waive the fee for the granting of a Pavement Licence, in order to support local businesses**
- 3. Agree that enforcement to be undertaken in accordance with the Corporate Enforcement Policy.**
- 4. Confirm that all the licensing functions, powers and duties contained within the Business and Planning Act 2020 are delegated to the Executive Director - Operational Services.**
- 5. Agree and approve to adopt the proposed conditions as standard conditions for Pavement Licences issued by the Borough Council. Approval to publish those conditions as guidance for applicants, consultees and members of the public.**

**Reasons**

The Business and Planning Act 2020 received Royal Assent on 22<sup>nd</sup> July 2020 for immediate implementation. Advice from the Monitoring Officer is that these functions fall within the existing delegations to the Licensing and Public Protection Committee. In order to discharge the powers effectively, the Licensing & Public Protection Committee is requested to approve the proposed standard conditions, waiver of fees and delegation to officers.

**1. Background**

1.1 The new Business and Planning Act 2020, received royal assent on 22<sup>nd</sup> July 2020 and makes significant changes designed to help premises (including public houses, cafes, bars, restaurants, snack bars, coffee shops, and ice cream parlours) to survive and then bounce-back from the pandemic lockdown.

1.2 The provisions include:

- A new “Pavement Licence” regime, to be administered by local authorities, designed 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.
- Alcohol licensing changes that will allow operators with existing alcohol on-sales licences to also serve alcohol for consumption off the premises and to make deliveries.

1.3 The Act includes temporary measures (up to 30<sup>th</sup> September 2021) to support businesses selling food and drink through economic recovery as lockdown restrictions are lifted but social distancing guidelines remain in place.

1.4 Cafes, pubs and restaurants are now permitted to open, and current social distancing guidelines are having considerable impact on the capacity to accommodate customers.

1.5 The measures in the Act are designed to support businesses selling food and drink such as cafes, pubs and restaurants by introducing a temporary fast-track process for these businesses to obtain permission, in the form of a “pavement licence”, for the placement of furniture such as tables, chairs, umbrellas and patio heaters on the pavement outside their premises. This will enable them to maximise their capacity whilst adhering to social distancing guidelines. The current process for businesses to obtain these licences can be costly and time-consuming.

1.6 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 10 working day determination period, ensuring that businesses can obtain licences in a timely and cost effective manner aiding to their financial recovery.

## 2. Issues

2.1 The Business and Planning Act received Royal Assent on 22<sup>nd</sup> July 2020, for immediate implementation.

### Pavement Licenses:

2.2 The Act introduces a new licence – a ‘pavement licence’. Operators businesses selling food and drink may apply to their local authority for authorisation to put furniture such as tables and chairs on the highway adjacent to their premises to sell food and drink from and/or for their customers to use.

2.3 As the country emerges from lockdown, pavement cafes have assumed a new importance given the scientific evidence of a lower risk of spreading coronavirus outdoors. With the re-opening of restaurants, cafes, bars and public houses from 4 July 2020, the pavement licensing regime set out in the Business and Planning Act, will offer the hospitality sector a simpler administrative route to providing an outdoor environment for customers. The Government hopes this will give a boost to the hospitality sector, which is particularly badly hit by coronavirus, allowing premises to trade to as full an extent as possible given the constraints placed on capacity by social distancing.

2.4 The new licensing regime in the Act provides a fast track procedure for the grant of a pavement licence which bypasses the existing regulatory regimes. Trading pursuant to a pavement licence does not need a Highways Act permit; is deemed to have planning permission; and is not street trading for the purposes of street trading legislation.

- 2.5 Pavement licences are a temporary measure. No licence will extend beyond 30 September 2021 or on such a later date as the Secretary of State may prescribe (but no earlier).
- 2.6 The pavement licensing regime is operated by District Councils in Staffordshire, with a requirement to consult with Staffordshire County Council as the Highways Authority.
- 2.7 The grant of a pavement licence will not alter the permitted operational hours of premises on an associated planning permission or premises licence.
- 2.8 There can be an application fee of up to £100 for a pavement licence to cover the administrative cost of issuing the application, and the ensuring compliance. The maximum fee will mean that the Council will make a loss on these applications, because the fee cap does mean that we are not able to operate on a full cost recovery basis. Officers understand that some, Staffordshire LAs are going to apply a £100 fee and other have determined no fee. It is considered that it is more suitable to waive the fee in order to support businesses for the length of time that the licence is granted to afford them security and certainty. For this reason, officers are recommending that the licences run for 12 months or until 30 September 2021, whichever is the shortest. This reduces the burden on businesses having to renew a licence and spreads out applications, should renewal of these in 2021 becomes an option.
- 2.9 The timescales for consultation and determination of a licence application are tight. The applicant must post a notice on the premises on the same day as the application is made. The notice must be in place for a consultation period of 5 working days beginning with the day after the day the application is submitted. The Council must publish the application on its website and allow people to comment during the 5 working days consultation period. The Council must consult with the highway authority and 'such other persons as the local authority considers appropriate' e.g. police, residential neighbours. The Council must determine the application within a period of 5 working days beginning with the first day after the consultation period. If the Council does not determine the application within this period, the pavement licence will be deemed as granted.
- 2.10 The Council can either grant the licence application, with or without conditions, or reject it. There is no right of appeal. The Council must act reasonably in determining pavement licence applications in accordance with normal public law principles e.g. it must have regard to relevant considerations and disregard irrelevant considerations.
- 2.11 It is noted that there is no formal route of appeal set out in the legislation. The Government guidance does suggest that where applications are refused Council's may wish to adopt an internal review process such as permitting an 'appeal' to the Licensing sub-committee. Officers would not encourage members to adopt this approach, due to the additional time and resource incurred. Advice received from the Monitoring Officer is that these powers fall within the existing scheme of delegation and can be determined by officers in the Environmental Health Service. Committee is asked to confirm that it is content with that approach.
- 2.12 In determining the application, the Council will need to evaluate whether the proposal is reasonably acceptable in the particular location, having regard to the temporary nature of the licence and the objectives of the Act. The Council must take into account any representations received and will have regard to Government guidance.
- 2.13 It is recommended that standard conditions are adopted in relation to pavement licenses. The local conditions which officers propose to apply in granting Pavement Licences, and to publish as guidance for applicants, consultees and members of the public, are set out below for approval.

- 2.14 In addition to the Councils' proposed conditions there are two conditions included in the Act that will apply to every licence granted. They are known as the 'no-obstruction' and 'smoke-free seating' conditions. The 'no-obstruction' condition provides that a licence holder may not prevent certain traffic from entering, passing along or having normal access to the Highway, prevent statutory undertakers having access to any of their apparatus in, on or over the Highway, or prevent to operator of telephone/internet cables etc that are in, on or over the Highway. The 'smoke-free seating' condition provides that where the furniture to be put on the relevant highway consists of seating for use by persons for the purpose of consuming food or drink, the licence-holder must make reasonable provision for seating where smoking is not permitted.
- 2.15 In applying the focus directed by Members it has been necessary to consider Staffordshire County Council's existing policy for approving 'Street Cafes' due to their role as the highway authority and consultee in the licence grant process, our potential liabilities in permitting use of a highway for business purposes, the potential for ASB and nuisance behaviour from customers, and our statutory duties to consider the needs of all highway users under Equalities legislation.
- 2.16 Adopting the proposed conditions, which have been agreed with County Council officers and discussed with partners, will streamline the consultation and approval process, ensuring that each application receives appropriate consideration within the very short legal processing time limit rather than being automatically 'deemed' as approved.
- 2.17 In designing the conditions below (sec 3.6) consideration has been given to those being proposed by other Staffordshire Authorities, and ones already applied by Stoke Council under their existing Street Café licensing process, to promote consistency across the County.
- Off-Sales:**
- 2.18 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. It is designed to be a temporary measure to "boost the economy", with provisions lasting until the end of September 2021.
- 2.19 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 inside.
- 2.20 The provisions **remove the need for any application 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 the premises affected by these measures. Premises should notify the licensing authority prior to them starting to benefit from the new off-sales provisions. They must also prominently display a statement confirming that they are benefiting from the off-sales provisions alongside the summary of their premises licence.
- 2.21 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.

- 2.22 The default hours in which off-sales will be permitted will be 23.00 hours. However where a premises has a current closure time for an existing outside area that is earlier than that time will remain. Any licensee who wished to open for longer hours could apply for a licence variation.
- 2.23 The provisions will also apply temporary conditions to licences where there is a pre-existing permission for off-sales.
- 2.24 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.
- 2.25 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. **Proposal**

- 3.1 There are a number of matters which committee need to decide these are:
- 3.2 **Agree the standard duration to be granted for pavement licenses to be for 1 year or to expire on 30<sup>th</sup> September 2021 or whichever is the soonest.**
- 3.3 **Agree to waive the fee for the granting of a Pavement Licence**
- 3.4 **Agree that enforcement to be undertaken in accordance with the Corporate Enforcement Policy.**
- 3.5 **Confirm that all the licensing functions, powers and duties contained within the Business and Planning Act 2020 are delegated to the Executive Director - Operational Services.**
- 3.6 **Agree and approve to adopt the proposed conditions (as below) as standard conditions for Pavement Licences issued by the Borough Council. Approval to publish those conditions as guidance for applicants, consultees and members of the public.**

### **Proposed Conditions**

1. The grant of a pavement licence does not imply an exclusive right of use by the licence holder of an area of public highway since the Borough Council, the Highways Authority, the Emergency Services and other statutory undertakers may need access to the area for their functions. The Borough Council will not be liable, and will not compensate the Licensee, for any losses whatsoever arising from use of the licensed area by others. When requested to do so by an officer of the Borough Council or the Emergency Services the licensee must remove such furniture and fittings as the officer directs.

2. The grant of a pavement licence is for the period stated upon the licence, and only to enable the licence holder to place service counters or stalls, shelves, umbrellas, barriers, tables, chairs and benches within the licensed area for the stated period for the sole purpose of the service and consumption of food and/or drink in connection with the use of the licensee's business premises.
3. Where it is sited immediately in front of, or to the side of, the licence holders existing business, the licensed area must be within the width of the frontage or side elevation of the existing business premises.
4. The licensee must obtain and maintain public liability insurance in the amount of £5 million in respect of any one incident, and indemnify the Borough Council and Staffordshire County Council (the highway authority) against all actions, proceedings, claims, demands and liability arising from the licensee's use of the highway for the licensed purpose.
5. Any proposed change of detail in respect of the pavement licence must be notified in writing to the Borough Council 7 days prior to the change occurring.
6. A copy of the licence and plan of the licensed area must be displayed in a prominent position on the business premises that is visible from the exterior of the premises.
7. Clear routes of access along the highway must be maintained taking into account the needs of permitted vehicular traffic and mobility impaired and visually impaired people, and to comply with government guidance regarding social distancing precautions to control the spread of Covid-19. In particular a 2-metre width of unobstructed pedestrian pathway with a minimum unobstructed height of 2.3 metres must be maintained during the permitted hours stated on the licence. Attention must be paid to any existing street furniture, trees etc. with regard to the required distances when planning the layout of permitted furniture and fittings.
8. The positioning of permitted furniture and barriers must not prevent access by pedestrians or vehicles to bus stops, taxi ranks and other premises frontages. It must not obscure any highway signs or markings, nor the visibility of pedestrians or vehicles on or near junctions. It must not obstruct pedestrian access to tactile paving or dropped kerbs, nor interfere with drainage of the highway.
9. All furniture and fittings must be regularly cleaned and sanitised in accordance with Covid-19 guidance and maintained in a good state of repair. By design they must be resistant to external forces such as wind. Fixing them to the surface or infrastructure of the highway, and excavations of any kind are not permitted.
10. Demarcation barriers must be a minimum of 800mm high and include solid surfaces or tapping rails at or near ground level to assist visually impaired people. They should be of a colour or design which is distinct from the surroundings to provide visual contrast.
11. Space heaters must be suitable guarded, and no barbecues, fire pits or naked flames are permitted in the licensed area.
12. The use of the permitted pavement area must cease by 23:00 or such earlier or later time as specified in the licence. All furniture and fittings must be removed where this is not done the Borough Council may remove and store these items, or remove and dispose of them, with the associated costs recharged to the licensee.

13. A sufficient number of litter bins must be provided to contain litter and other waste generated during trading. These must be emptied by the business into the premises main waste receptacles at the end of each trading period or whenever the litter bin becomes full.
14. No glass bottles or glass drinking vessels are permitted to be used in the pavement licensed area beyond 20:00hrs.
15. The licence holder is solely responsible for all furniture, fittings, and equipment and shall make no claim or charge against the Borough or County Council in the event of those items being lost, stolen or damaged.
16. The licensed area must be included in the businesses risk assessment of the potential for transmission of Covid-19 with necessary controls and relevant government guidance implemented to protect staff and customers.
17. A risk assessment is also required to consider any necessary controls to prevent anti-social behaviour, and also public nuisance if there are residential properties within close proximity to the licensed area.
18. No alcohol is to be consumed within the licensed area except in compliance with authorisation issued to the business premises under the Licensing Act 2003 for that purpose
19. All customers must be seated with no vertical drinking permitted.
20. No amplified music or sports commentary may be played in the licensed area.
21. The licensed area must be regularly checked for spills of food and drink and thoroughly cleaned at the end of the trading period to remove any residues, particularly grease and other staining.
22. The pavement license holder is responsible for actively managing any queues to their premises ensuring social distancing is observed and that no obstructions to the highway or other surrounding premises.

#### 4. **Reasons for Proposed Solution**

- 4.1 The Business and Planning Act has received royal assent on 22 July 2020. This Act will enable applications to be made to the Council for pavement licences. The Council needs a mechanism in place for determining pavement licensing applications.

#### 5. **Options Considered**

- 5.1 Members could decide not to delegate powers in relation to pavement licensing, or to delegate powers to a different Officer or to the Licensing Committee. This is not recommended given the tight timescales for the processing of licence applications and deemed approvals in the event of failure to determine on time. The Council's licensing team, within the remit of the Head of Environmental Health, supported by the Council's Legal Services has the expertise to process and determine these applications.

#### 6. **Legal and Statutory Implications**

- 6.1 The legal and statutory implications are fully addressed in the body of this report.

7. **Equality Impact Assessment**

7.1 There are no issues arising from this report.

8. **Financial and Resource Implications**

8.1 The Council can charge a fee of up to £100 per pavement licence application. This is unlikely to cover the full cost of administering the service.

9. **Major Risks**

9.1 The risk of not accepting the recommendation is that the Council will not have in place an appropriate mechanism of determining applications for pavement licences, which must be determined within strict timescales to avoid deemed licences being granted without the merits of the proposals being properly assessed.

10. **Sustainability and Climate Change Implications**

10.1 There are no issues arising from this report.

11. **Key Decision Information**

11.1 This is not a key decision.

12. **Earlier Cabinet/Committee Resolutions**

12.1 None

13. **List of Appendices**

13.1 None

14. **Background Papers**

14.1 [The Business and Planning Bill & Act](#)

14.2 [The Business and Planning Act Guidance for Pavement Licences](#)