

## **URGENT BUSINESS**

# **Business and Planning Act 2020 Introduction and Implementation of Pavement Licence requirements and “off sales” of alcohol**

**31 July 2020**

## **Report of Licensing Manager**

### **PURPOSE OF THE REPORT**

To seek approval for the introduction and implementation of the administration and enforcement of the provisions contained within Part 1 of the Business and Planning Act 2020 in respect of Pavement Licences

### **RECOMMENDATIONS**

- 1. A fee of £100 be set in respect of an application fee for a pavement licence.**
- 2. That where a pavement licence is granted it shall normally be granted for a period up to and including 30 September 2021 or a lesser period (not less than 3 months) as directed by the applicant or upon determination by the Local Authority**
- 3. That the policy and associated appendices (1-4) attached at Appendix A be approved with immediate effect**

#### **1.0 Introduction**

1.1 On 22 July 2020 The Business and Planning Act 2020 came into force.

1.2 Part 1 of the Act deals with the consumption and sale of food and drink outdoors, and relates to two particular licensing issues

- The introduction of Pavement licences
- The modification of premises licences to authorise off sales of alcohol for a limited period

1.3 Historically the Council has dealt with the Licensing of Street/ Pavement cafes utilising the provisions contained within the Highways Act 1980. In effect the licensing of such areas is the Council giving its approval for the applicant to use the part of the highway as indicated by the licensee in his/her application. The Highways Act 1980

street café licences remain in place for 1 year, cost £158 and are subject to a set of standard licensing conditions. The licensing conditions are generally concerned with

- Protecting public safety
- Preventing public nuisance
- Ensuring access for public utility providers when needed
- Promoting the appearance of the area (quality/ type of furniture etc)

The Highways Act 1980 licence makes provision for licences to be revoked where problems are identified. The provisions of the Highways Act 1980 street café licences remain in statute and therefore any licences issued under these provisions remain valid.

- 1.4 The Business and Planning Act 2020 (the “Act”) now introduces a “Pavement Licence” for the licence holder to put removeable furniture on part of the highway **adjacent** to the premises to sell / serve food and/or drink and also allows people to consume food and or drink supplied from or in connection with the premises. In effect this allows the area to be used as an extended seating area to the premises or to be a stall from which food/ drink is sold/ served. The licence can be applied to any premises which sells food and/or drink for consumption on or off the premises and is not restricted to those premises where alcohol is sold. For example, it can be used by a café to set up an ice cream stall outside,) or it can be used to facilitate what we traditionally regard as a street café.
- 1.5 The B Act also introduces provisions for the automatic modification of premises licences (issued under licensing Act 2003) to authorise the “off-sale” of alcohol for a limited period. The period will end on 30 September 2021. The Act does include measures to exclude certain premises that are currently specifically excluded from selling “off sales” and also makes it clear that those off sales are only permitted during the hours that the premises is licensed for on sales. There are also provisions within the Act regarding proposals to review licences in respect of off sales that have proved problematic.
- 1.6 The above two provisions are being introduced as a temporary measure (up to and including 30 September 2021) in order to facilitate the operation of business within the restrictions / guidance currently in place regarding the covid 19 pandemic. The pavement licence provision provides a fast track application procedure detailing a 7 days consultation period and a subsequent maximum 7 day period in which those applications must be determined, failure to do so results in licences being granted by default

## **2.0 Reason for the matter to be considered as urgent**

- 2.1 The Act came into force on 22 July 2020 and requests for applications are already being received by the Licensing department. The Act specifies a short timescale for consultation and the decision-making process, to enable pavement licences to be facilitated quickly. It is envisaged that the use of pavement licences will be maximised during summer months i.e. longer days and milder weather. As such it is imperative that the Council has the necessary decision making processes and policies in place without delay.

### **3.0 Pavement Licences**

#### **3.1 The Act details the following**

- Applications must be made in writing to the Local Authority
- Applications must be accompanied by a fee of not more than £100 as the local authority may require
- Applications must contain specific information; these are not detailed in this briefing paper but replicate the information currently required by the Council in respect of Highways Act licence applications
- The local authority has to publish the application and publicise the 7 day consultation period
- The applicant must place a notice at the premises advising of the application, the details of the notice requirements are not provided in this report but largely replicate the Licensing Act public notice requirements. The notice must stay in place until the end of the consultation period
- The local authority must consult the highways authority and any other persons it considers appropriate regarding the application.
- The local authority must take into account any representations made during the consultation period
- The local authority has 7 days following the close of consultation to determine the application, failure to do so means that the licence is granted by default
- The local authority can grant, or refuse the licence in respect of any or all of the purposes and or in respect of some or all of the highway area
- The licence if granted, cannot be for a period of less than 3 months and can be up to and including 30 September 2021
- The licence will be subject to default mandatory conditions in respect of provisions of no smoking areas and access for mobility impaired and can be subject to reasonable conditions imposed by the local authority
- Pavement licences do not repeal the provisions of the Highways Act Licences, as such existing highways licences remain in place and valid
- There are a number of provisions detailed in the Act in respect of enforcement powers, these include the facility to revoke the licence in respect of public health or safety concerns, anti-social behaviour, public nuisance or obstruction of the highway.
- The Act details that a pavement licence constitutes deemed planning permission.

A draft policy has been produced outlining the Councils processes and procedures to be followed in respect of applications for Pavement licences this is attached at within Appendix A

### **4.0 Modification of premises Licences to permit off sales**

This element of the Act requires little or no change to operational practices in the administration and issue of Premises licences. In effect the Act introduces an automatic modification of existing premises licence that only cover on sales to allow off sales of alcohol. There are provisions within the Act to withhold such permissions from particular premises who have actively been prohibited from undertaking off sales and also a facility to review a premises licence in respect of the off sales

provision. There is no requirement in the Act for Local Authorities to reissue premises licences to reflect the time limited automatic modification to allow off sales

## 5.0 Guidance

- 5.1 Statutory guidance has been produced by the Government and is attached at **Appendix B**. It should be noted that within the Act there is reference to a time period of 7 days where the guidance specifies 5 working days. The time periods detailed in the Act will take precedent



### **CONCLUSION OF IMPACT ASSESSMENT**

**(including Diversity, Human Rights, Community Safety, Sustainability and Rural Proofing)**

### **FINANCIAL IMPLICATIONS**

The current fee for a Highways Act Street café licence is set at £158, this fee has been set at a level of cost recovery . The Pavement Licence administrative process will largely replicate that of the Highways Act Street café licence process. the maximum fee that can be charged by the Council for a Pavement licence is £100.

It is unclear how many applications will be received, the provision of a outside eating/ drinking area will facilitate social distancing within premises, however this is reliant on appropriate highway space being available and a recognition that the benefit of such areas particularly during winter months may be limited.

The administrative work involved in processing the application is expected to be similar to that associated with Highways Act Street Café licences, with the additional administrative burden of a requirement to determine applications within 7 days of the close of consultation.

Within the Policy attached at Appendix 2 of Appendix A is a proposal to waiver the fee for premises licences application in respect of premises that hold a current valid Street Café Licence for the identical area/ location. This seeks to ensure that premises licensed under the street café licencing regime do not incur an additional financial burden if they wish to transfer to a pavement licence

### **LEGAL IMPLICATIONS**

These are outlined in the report and there are no further comments to add.

**SECTION 151 OFFICER'S COMMENTS**

**MONITORING OFFICER COMMENTS**

The Monitoring Officer has been consulted and has no further comments to make.

**BACKGROUND PAPERS**

None

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