

TONBRIDGE & MALLING BOROUGH COUNCIL

CABINET

30 June 2020

Report of the Director of Central Services & Deputy Chief Executive

Part 1- Public

Executive Non Key Decision

1 **BUSINESS AND PLANNING BILL – PAVEMENT LICENCES/ OFF-SALES OF ALCOHOL**

Executive Summary

This report provides an update on the key proposals contained within the Business and Planning Bill relating to pavement licences/ off-sales of alcohol and recommends delegation of functions to allow for the determination of applications for pavement (outdoor seating) licences.

1.1 Background

1.1.1 On 25 June 2020 the Government introduced the Business and Planning Bill into the House of Commons. A copy of the Bill as introduced into the Commons can be viewed via the following link –

<https://services.parliament.uk/bills/2019-21/businessandplanning.html>

1.1.2 The measures in the Bill are designed to support businesses selling food and drink by introducing a temporary fast-track process for these businesses to obtain permission from their local authority for the placement of furniture such as tables and chairs on the pavement outside their premises.

1.1.3 Any business which uses (or proposes to use) premises for the sale of food or drink for consumption (on or off the premises) can apply for a licence. Businesses that are eligible include: public houses, cafes, bars, restaurants, snack bars, coffee shops, and ice cream parlours.

1.1.4 The Bill also amends the Licensing Act 2003 to allow for 'off sales' of alcohol. Premises with a licence authorising 'on-sales' only (sales of alcohol for consumption on the premises i.e. within the red line of the approved plan) will automatically have 'off-sales' added to their licence, if it doesn't already permit it.

1.1.5 At the time of preparing this report, it is anticipated that all Commons stages for the Bill will be completed on 29 June, with the Bill expected to receive Royal Assent on 1 July. It is expected that many businesses will seek to apply for licences as soon as the proposals receive Royal Assent, so it is important that the Borough Council

has the appropriate processes in place to enable it to receive & determine such applications.

- 1.1.6 The Bill also introduces a number of provisions in relation to the planning regime (e.g. construction working hours, extensions of certain permissions/ consents). These will be reported to a future meeting of the Planning and Transportation Advisory Board.
- 1.1.7 The key elements of the Bill relating to pavement licences and off-sales are summarised below.

1.2 Pavement licences

- 1.2.1 The Bill introduces a new legal framework for issuing pavement licences, which will enable food and drink businesses to put removable furniture on the pavement adjacent to their premises in order to sell or serve food and drink, or for people to sit at to consume food and drink. The framework supersedes the existing framework for pavement licensing set out in the Highways Act 1980, but does not impact on licences already issued.
- 1.2.2 Local authorities will be required to process applications for pavement licences within two weeks, and a maximum fee of £100 will be payable. Each application will be subject to a 7 days consultation period, with any representations required to be considered in determining the application (within 7 days after end of the consultation period).
- 1.2.3 A local authority may grant a pavement licence only if the authority considers that, taking into account any conditions subject to which it proposes to grant the licence, nothing done by the licence holder pursuant to the licence would have an effect specified below
 - (a) preventing traffic, other than vehicular traffic, from—
 - (i) entering the relevant highway at a place where such traffic could otherwise enter it (ignoring any pedestrian planning order or traffic order made in relation to the highway),
 - (ii) passing along the relevant highway, or
 - (iii) having normal access to premises adjoining the relevant highway,
 - (b) preventing any use of vehicles which is permitted by a pedestrian planning order or which is not prohibited by a traffic order,
 - (c) preventing statutory undertakers having access to any apparatus of theirs under, in, on or over the highway, or

(d) preventing the operator of an electronic communications code network having access to any electronic communications apparatus kept installed for the purposes of that network under, in, on or over the highway.

- 1.2.4 Licences must be for a minimum of three months and can run for any period up to an end date of 30 September 2021. Where a local authority does not respond to an application within two weeks (which includes the public consultation period), a licence will be deemed to have been granted for a year. Both councils and the Secretary of State may issue conditions in relation to pavement licences: where licence conditions are breached, the local authority can serve a notice or revoke the licence.
- 1.2.5 On the issue of duration, it is suggested that it may be appropriate to grant licences for a period up to 31 March 2021. By granting a licence of this duration, a fresh application will be required prior to summer 2021 and the Council will then be able to review its approach in light of experience during 2020.
- 1.2.6 A local authority by which a pavement licence is granted or deemed to be granted may also revoke the licence if it considers that—
- (a) some or all of the part of the relevant highway to which the licence relates has become unsuitable for any purpose in relation to which the licence was granted or deemed to be granted,
 - (b) as a result of the licence—
 - (i) there is a risk to public health or safety, or
 - (ii) anti-social behaviour or public nuisance is being caused or risks being caused,
 - (iii) the highway is being obstructed (other than by anything done by the licence-holder pursuant to the licence),
- 1.2.7 Once granted, a pavement licence shall constitute deemed planning permission for anything done by the licence holder pursuant to the licence which is either (a) development requiring permission under the Town & Country Planning Act 1990 or (b) for which there would otherwise not be planning permission or deemed planning permission.
- 1.2.8 Draft guidance to accompany the proposed provisions in relation to table licences was issued on 25 June 2020. This can be viewed via the following link

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

1.2.9 Presently, licences to place tables, chairs and temporary street furniture on the highway are dealt with by Kent County Council, in their capacity as the Highway Authority. However, the Bill proposes that the appropriate local authority for granting licences under the new provisions will be the local authority in whose area the premises are situated. County Councils will only be the determining authority in areas for which there is no District Council. The Borough Council will however be required to consult KCC as Highway Authority before they determine any application.

1.3 Off-sales of alcohol

1.3.1 The automatic addition of “off sales” to premises licences is a temporary measure that will end on 30 September 2021 (unless further extended by the Government).

1.3.2 The automatic addition of off-sales to every premises licence mirrors the same hours that the premises have for on-sales. Because the addition of this authorisation is automatic, no applications have to be made to the Council, and no fee is payable. Responsible authorities are not consulted about it, and cannot object to it. However, if the premises licence holder wants to extend the hours for off-sales i.e. so that they are longer than on-sales, they can apply to vary the licence in the usual way.

1.3.3 There are certain exceptions set out in the Bill e.g. licence holders who have previously applied for authority to make off-sales within the last 3 years (whether by way of a new application or an application to vary) and were refused, or who had their licence varied or modified so as to remove such authority within the same period.

1.3.4 The Bill does contain some safeguarding provisions, in case the addition of off-sales to a licence leads to difficulties. If particular problems do arise in an individual case, then any responsible authority (eg: Police, Environmental Health, Licensing Authority, Trading Standards and others) can apply to the Local Authority for a review. Any review would have to be based upon one or more of the statutory licensing objectives, and would be limited just to the new off-sales permission.

1.4 Delegation

1.4.1 There are no existing provisions within the Constitution that would enable the Borough Council to receive and determine applications.

1.4.2 The Bill does not specify whether the function is to be discharged by the Executive or Council. In the absence of any specific statutory provision, Section 13 of the Local Government Act 2000 provides that it shall be an Executive function.

1.4.3 Given the tight timeframe set out in the Bill, it is recommended that responsibility for determining applications is delegated to Officers. The Council will have 7 days after the close of public consultation period to determine applications, so it won't be practicable to convene a formal Member meeting within this timeframe.

1.5 Legal Implications

1.5.1 As set out above.

1.6 Financial and Value for Money Considerations

1.6.1 The Council can charge a fee of up to £100 for each application under the Act. Given the low level of the fee, and the time it will take to process each application, it is recommended that the application fee is set at the maximum permitted level of £100.

1.6.2 Any fee income would also need to cover the costs of enforcement activity, which is currently unbudgeted. It is difficult to quantify at this stage, but there could be increased demand from residents to monitor compliance, certainly in the early phase of introduction of these measures. In the event that the costs exceeded fee income then they would represent growth.

1.7 Risk Assessment

1.7.1 It is essential that the Council agrees a mechanism for the determination of applications for pavement licences under the proposals set out in the Business and Planning Bill. A failure to do so could lead to many licences being granted by default, without appropriate consideration by the Council.

1.8 Policy Considerations

- Community
- Business Continuity/Resilience
- Healthy Lifestyles
- Customer Contact
- Health & Safety

1.9 Recommendations

1.9.1 Cabinet are **RECOMMENDED** to

(a) Subject to the Business and Planning Bill receiving Royal Assent, delegate to the Director of Central Services all functions of the Council to deal with applications for pavement licences;

(b) Agree that the fee for applications for pavement licences shall be set at £100.

Background papers:

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The Business and Planning Bill 2020