



Report for:	Cabinet
Date of meeting:	21 July 2020
Part:	1
If Part II, reason:	

Title of report:	Pavement Licences and Licensing for Pubs and Restaurants
Contact:	Councillor Andrew Williams, Portfolio Holder for Corporate and Contracted Services Responsible officers: – Farida Hussain, Group Manager, Legal and Corporate Services, Nathan March, Licensing Team Leader
Purpose of report:	<ol style="list-style-type: none"> 1. To brief Cabinet on new legislation giving powers requiring the Council to determine Pavement Licences 2. To agree officer delegations required for the determination and enforcement of licences , and fees
Recommendations	<p>That Cabinet:</p> <ol style="list-style-type: none"> 1. Delegate responsibility for granting, refusal and revocation of licences, including the setting of conditions, to the Assistant Director – Corporate and Contracted Services and the Group Manager, Legal and Corporate Services 2. Agree that fees will be set at the maximum permitted level of £100 in order to recover as much of the cost of issuing licences as possible. 3. Agree that the duration of licences will be to 30th September 2021, unless revoked.
Period for post policy/project review	In advance of 30 th September 2021, when powers are currently due to come to an end, in case of any transitional requirements or similar.

Corporate objectives:	<ul style="list-style-type: none"> • A clean, safe and enjoyable environment • Building strong and vibrant communities • Ensuring economic growth and prosperity • Delivering an efficient and modern council
Implications: 'Value for money' implications	<p><u>Financial</u></p> <p>Maximum fee permitted is £100, which will not cover the cost of the process for determining each licence, however the work will be covered within existing staff resources. The most appropriate option is to set the licences at the highest level, and set the duration for the longest period permitted, to save repeating the process.</p> <p><u>Value for money</u></p> <p>Charging the maximum fee, and issuing for the longest duration available is best value for money approach</p>
Risk implications	<p>Licences are deemed to be granted if not approved or refused within the 14 days period, Failure to have a process in place, and seeking to prevent such licences being issued or controlled by condition could lead to reputational damage to the Council and allow premises to operate without sufficient controls in place.</p>
Community Impact Assessment	<p>Community Impact Assessment carried out 30 June 2020 Attached as Appendix 1</p>
Health and safety Implications	<p>Potential spread of coronavirus if rejected, or if granted, dependent on management of the relevant premises.</p> <p>Damage to health of local residents if granting licences leads to significant nuisance that is not then dealt with effectively</p> <p>Risk to safety of patrons and other highway users if highway is obstructed increasing risk of incident as a result of other highway users.</p> <p>There is a power to revoke which safeguards against these risks.</p>
Monitoring Officer/S.151 Officer Comments	<p>Deputy Monitoring Officer Comments</p> <p>The Business and Planning Bill 2020 introduces a new legal framework for issuing pavement licences by local authorities. The framework supersedes the existing framework for pavement licensing set out in the Highways Act 1980.</p>

	<p>Deputy S151 Officer Comments</p> <p>There are no direct financial consequences of this policy change.</p>
Consultees:	Environmental Health, Planning (short consultation due to timeframe)
Background papers:	<p>Business and Planning Bill</p> <p>NEXSTART Business and Planning Bill 2019-21 Pavement Licences</p> <p>Briefing Note: Business and Planning Bill: Considerations for District Councils</p>
Glossary of acronyms and any other abbreviations used in this report:	

1. Introduction:

1.1. The Business and Planning Bill 2020 is expected to obtain Royal Assent by the end of July and is likely to become an Act of Parliament with immediate effect at that point. The contents of this report are subject to potential alteration given that at the time of writing the Bill is yet to be debated in the House of Lords and changes may be made during that process.

1.2. The timeline for the Bill has now been confirmed as follows:

- Second Reading – 6 July
- Committee – 13 July
- Report & Third Reading – 20 July

1.3. The Bill introduces a number of powers and requirements on local authorities that affect how they deal with a variety of issues, with the aim of supporting local businesses and helping economic recovery as the restrictions put in place by Government continue to be eased. These powers are temporary, remaining in place until 30th September 2021.

1.4. Two of the most significant proposals within the Bill are:

1.5. The change in approach to outdoor furniture provision for relevant businesses (as defined in the Bill) to enable them to increase their trading space 'pavement licences'.

2. Relaxation of off sales of alcohol for licensed premises

- 2.1. The changes include requiring pavement licences to be dealt with by District Councils rather than County Councils, despite the County Councils having responsibility for Highways matters in normal circumstances. As a result of this, the Council needs to ensure that everything is in place in order to allow such applications to be made, consulted upon and determined within a short timescale.
- 2.2. This report will explain the proposed requirements for the Council, and what needs to be put in place urgently in order to meet these requirements. The Council has control over some aspects of the licensing process, and these are outlined, with recommended approaches for each aspect which it is considered provide best value for customers and the Council, as well as protecting other members of the public from potential implications of such licences being granted.

3. Pavement licensing requirements

3.1. The Bill requires that 'Pavement Licences' are issued by District Councils, and also introduces other important changes to the way that these are dealt with.

3.2. The key requirements of pavement licensing are as follows:

- Any business selling and/or serving food or drink may apply for a pavement licence to have tables and chairs and other street furniture such as patio heaters placed on the highway adjacent to their premises for the benefit of their customers – if the land is not a highway and is privately owned land separate consent of the landowner is required.
- Licences will be considered granted unless the Council rejects them within a set statutory period.
- The Council has 14 days to determine an application, with half of that forming a public consultation, and the other half being the time permitted for the consultations received to be considered and a decision made.
- A maximum fee of £100 can be charged for applications.
- Licences can last for a maximum of the full period that the legislation will have effect i.e. 30th September 2021, with the shortest duration being no less than three months.

4. Conditions

4.1. The Secretary of State for Department for Business, Energy and Industrial Strategy may impose statutory conditions for pavement licences, and the Council can also attach conditions to licences. There is a proposed national condition and the Council should also consider a set of standard conditions and conditions specific to certain premises as required.

4.2. The national condition will be:

- It is a condition that clear routes of access along the highway must be maintained, taking into account the needs of disabled people, and the

recommended minimum footway widths and distances required for access by mobility impaired and visually impaired people as set out in Section 3.1 of Inclusive Mobility (<https://www.gov.uk/government/publications/inclusive-mobility>).

- 4.3. The Council will be developing local conditions to ensure practices are in place that help to protect the public in terms of safety and prevention of nuisance for example conditions similar to:
- 4.4. The Licence holder shall not permit persons to cause a public nuisance or anti-social behaviour.
- 4.5. The Licence holder shall maintain the permitted area and the immediately adjacent area in a clean and tidy condition during the permitted hours and shall provide litterbins or similar receptacles for the disposal of rubbish
- 4.6. The Licence holder shall remove all furniture or equipment litterbins or other articles placed on the highway pursuant to this Licence at the expiry, surrender or revocation of the Licence and shall leave the highway in a neat and tidy condition.

5. Enforcement

- 5.1. The Council is being given enforcement powers for use to rectify licence related problems including the power to revoke if necessary. The Council will work with the Highways department at Hertfordshire County Council, where they continue to be responsible for other aspects of enforcement such as businesses who fail to obtain a licence when required.

6. Licensing Act 2003 relaxation to off-sales of alcohol

- 6.1. Licensed premises such as pubs and restaurants may have licences that allow only for provision of alcohol to be consumed on the premises (known as an on-licence), or they can also have an off-licence facility included too, which allows them to sell alcohol for consumption away from the premises.
- 6.2. Often, where an establishment such as a pub has an off-licence, there may be conditions attached such as a requirement for the drink to be sold in sealed containers if it is being sold to be taken away from the premises. There is no definition of what constitutes a 'sealed container', but the aim of such condition is to prevent alcohol being decanted into a wine glass, pint glass or similar glassware for immediate consumption.
- 6.3. As part of the Business and Planning Bill 2020, all premises with on-licences will automatically be permitted to sell alcohol to be taken away as if they have a licence permitting off-sales, and any restrictive conditions normally in place will also cease to have effect.
- 6.4. These relaxations apply to all the relevant licensed premises unless they have had a 'disqualifying event' in the preceding 3 years of this section of the act coming into force, and this is not the case for any premises in Dacorum.
- 6.5. Disqualifying events are defined in the Bill as premises where:

- the relevant licensing authority refused to grant a premises licence in respect of the licensed premises authorising off-sales,
- the relevant licensing authority refused to vary the premises licence so as to authorise off-sales, or
- the premises licence was varied or modified so as to exclude off-sales from the scope of the licence.

6.6. This means that it is possible that customers may buy alcohol from any premises and leave the premises, and take the alcohol anywhere they wish to drink it. This includes glassware, which could create various public safety concerns. In most cases it is unlikely that this will be an issue as the businesses will not want to lose their glassware, but those businesses with green spaces adjacent to their premises may be willing for customers to take glassware further away than would usually be permitted under their licence. If such issues start to arise, officers will look to resolve them by working with the relevant premises, and could seek to review the licence to add controls through conditions if necessary.

6.7. There are powers being introduced to review these relaxations where issues arise, but this will be on a case by case basis and will have to be considered by a sub-committee. In line with the more regular Licensing Act reviews, issues arising would generally have to be occurring in the vicinity of the premises to justify any restrictions being applied/reapplied to the relevant licensed premises.

7. Conclusions:

7.1. Pavement Licences

The Council must have a process in place in order to accept and determine applications for pavement licences, and to deal with any issues arising with licensees. An application fee and duration for licences issued needs to be agreed, and appropriate delegations need to be in place.

7.2. Relaxations for licensed premises

Restrictions on off-sales of alcohol from licensed premises pubs will be removed. The Council has no power to prevent this, but has powers to review premises licences where evidence of issues arise, although this is likely to only be the case where the issues occur within the vicinity of the premises.

8. Recommendations:

8.1. Members are asked to consider the recommendations at the start of the report, in order that application fees and duration of these licences are set, and so that officers may be delegated the relevant powers to ensure that applications can be determined, and enforcement action taken against licensees when necessary.