



Report for:	Licensing, Health & Safety and Enforcement Committee
Date of meeting:	4 August 2020
Part:	1
If Part II, reason:	

Title of report:	Pavement Licences and Licensing for Pubs and Restaurants
Contact:	Nathan March – Licensing Team Leader, Corporate and Contracted Services
Purpose of report:	<ol style="list-style-type: none"> 1. To brief the Committee on new legislation giving powers requiring the Council to determine Pavement Licences, following a last minute change making this a council function, rather than an executive one as initially intended. 2. To agree officer delegations required for the determination and enforcement of licences, the licence duration and fees to be charged.
Recommendations	<p>That the Committee:</p> <ol style="list-style-type: none"> 1. 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. 2. Agree the attached conditions. 3. Agree that the duration of licences will be to 30th September 2021, unless revoked. 4. Delegate responsibility for granting, refusal and revocation of licences, including amending conditions, to the Assistant Director – Corporate and Contracted Services and the Group Manager, Legal and Corporate Services.
Corporate objectives:	<ul style="list-style-type: none"> • A clean, safe and enjoyable environment

	<ul style="list-style-type: none"> • Building strong and vibrant communities • Ensuring economic growth and prosperity • Delivering an efficient and modern council
<p>Implications:</p> <p>'Value for money' implications</p>	<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 2</p>
Health and safety Implications	<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>
Consultees:	<p>Environmental Health, Planning (short consultation due to timeframe)</p>
Background papers:	<p>Business and Planning Act 2020</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:	
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1. Introduction:

- 1.1. The Business and Planning Act 2020 obtained Royal Assent on 22 July 2020. When drafted, it was intended that the powers in the Act would be an executive function, but following suggested amendments from the House of Lords this changed immediately prior to its enactment. The details of the Act were therefore presented at Cabinet on 21 July.
- 1.2. The Act has introduced 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.
- 1.3. Two of the most significant proposals within the Act are:
 - The change in approach to outdoor furniture provision for relevant businesses (as defined in the Act) to enable them to increase their trading space 'pavement licences'.
 - Relaxation of off sales of alcohol for licensed premises
- 1.4. 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.
- 1.5. 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.

2. Pavement licensing requirements

- 2.1. The Act requires that 'Pavement Licences' are issued by District Councils, and also introduces other important changes to the way that these are dealt with.
- 2.2. 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.

3. Conditions

- 3.1. The Act requires two set conditions and allows councils to develop standard conditions as well as some specific conditions for individual premises if considered appropriate.
- 3.2. The Council has developed local conditions to ensure practices are in place that help to protect the public in terms of safety and prevention of nuisance these are attached in Appendix 1.

4. Enforcement

- 4.1. 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.

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

- 5.1. 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.
- 5.2. 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.
- 5.3. As part of the Business and Planning Act 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.

5.4. 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.

5.5. 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.

5.6. 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.

5.7. 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.

6. Conclusions:

6.1. 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.

6.2. 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.

7. Recommendations:

7.1. 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.

Appendix 1

Conditions applying to licences

Trading times authorised for furniture placed on the highway:

Monday:

Tuesday:

Wednesday:

Thursday:

Friday:

Saturday:

Sunday:

National conditions

A1. Anything done by the licence-holder pursuant to this licence, or any activity of other persons which is enabled by the licence, must not have the effect of:

- (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.

A2. 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.

Standard local conditions

B1. This licence is valid only for the dates given until 30 September 2021.

B2. Only objects listed in the licence are permitted to be placed on the highway.

B3. The authorised objects and structures shall only be permitted between the hours stated on the licence and outside of those hours the objects and structures shall be removed and placed on or within your business premise.

- B4. You must leave the pavement in a neat and tidy condition at the end of each day.
- B5. Unless agreed in advance by a licence and enforcement officer, any conditions placed upon the licence must be complied with at all times. Failure to do so could be considered a breach and may result in the revocation or suspension of the licence.
- B6. You must not cause any unnecessary obstruction of the pavement/highway or danger to people using the pavement/highway.
- B7. You must not allow people to gather and cause a nuisance or annoyance or danger to any person lawfully using the pavement/highway.
- B8. You must not play music amplified or unamplified or any musical instruments, radio or television whilst your licence is in operation.
- B9. You must not allow any excavations or indentations of any description in the surface of the highway or place or fix equipment of any description to the surface of the highway.
- B10. You must not allow the use of the highway for any other purpose at any time other than during the hours permitted by your licence.
- B11. You must not place any furniture or equipment or advertisement on the highway that is not specified in your licence. You must not obstruct the access and exits to your premises.
- B12. You must remove all furniture, litterbins and other equipment placed on the highway at the expiry, surrender or revocation of the licence.
- B13. You must remove the permitted obstructions from the highway if instructed to do so by the Licensing Authority or Highway Authority.
- B14. During an emergency you must remove the permitted structures from the highway, if instructed to do so by:
- (a) Police Officer
 - (b) Fire Officer
 - (c) Paramedic
 - (d) Undertaker
 - (e) Utility Companies
 - (f) Any other authorised persons
- B15. You must display the Licence at the premises so it can be clearly seen from the highway.
- B16. You must comply with any reasonable requests in relation to the use of the highway by officers on behalf of the Council.
- B17. You must provide suitable barriers around the permitted area where required by the Licensing Authority.

- B18. You must indemnify the Council against all actions, proceedings, claims demands and liability which may be taken, made or incurred in the consequences of the use of the chairs and tables and other objects and for this purpose must take out at your expense a policy of insurance approved by the Local Authority in the sum of at least £5,000,0000 (FIVE MILLION POUNDS) in respect of any one event and must produce to the Local Authority on request the current receipts for premium payments.
- B19. You must not charge for the use of the chairs and table and other furniture.
- B20. No heaters of any kind are to be placed on or over the highway.
- B21. You must not obstruct access to any fire hydrant in the area.
- B22. You must not obstruct, obscure or hinder egress from any emergency escape route
- B23. The Licence Holder shall implement the Government guidance on the social distancing and other measures to limit potential spread of the coronavirus (Covid-19).

Non-standard local conditions

- C1. When required