



AGENDA ITEM:

SUMMARY

Report for:	Licensing, Health & Safety and Enforcement Committee
Date of meeting:	16 March 2021
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 update the Committee on legislation giving powers requiring the Council to determine Pavement Licences, following advice from The Ministry of Housing, Communities and Local Government. 2. To agree the continuation of 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 of £100 for pavement licensing will remain for a further year, until 30 September 2022, should the issue of pavement licences remain with the Council for that time. 2. Agree that the duration of licences issued after 30th September 2021, will be up to 12 months, with all of those licences remaining until 30th September 2022. 3. Confirm that the delegations for the responsibility for granting, refusal and revocation of licences, including amending conditions, remain with the Assistant Director – Corporate and Contracted Services and the Group Manager, Legal and Corporate Services. For the duration of the powers being with the Council.
Corporate objectives:	<ul style="list-style-type: none"> • A clean, safe and enjoyable environment • Building strong and vibrant communities

	<ul style="list-style-type: none"> • 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 maintain the existing process, or 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>A Community Impact Assessment was initially carried out 30 June 2020 and considered at the time that the legislation first came into effect.</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:	N/A
Background papers:	<p>Business and Planning Act 2020</p> <p>NEXSTART Business and Planning Bill 2019-21 Pavement Licences</p> <p>Letter from MHCLG – Supporting the reopening of outdoor hospitality – 5 March 2021 (attached)</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. The Act 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.

1.2. These powers are temporary, and originally remaining in place until 30 September 2021, but we have now been advised that it is likely that the powers will remain in situ until 30 September 2022, subject to parliamentary approval. The letter from the MHCLG attached in Appendix 1 contains further details.

1.3. The two most relevant sections of 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. As a result of the legislation, pavement licences can currently be dealt with by district councils, as an alternative to county councils, which have responsibility for Highways matters in normal circumstances. As a result of the likely extension of this power to 30 September 2022, the Council needs to ensure that everything is in place in order to allow such applications to continue to be made, consulted upon and determined within a short timescale.

2. Pavement licensing requirements

2.1. The Act requires that district councils will deal with any food and drink related pavement licence applications submitted to them, 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.
- Currently, all licences issued will last until 30th September 2021, the original date that the legislation would be in effect to.

2.3. Since the pavement licensing provisions came to the Council, only one licence has been applied for and this was granted without any issues. It is possible that there may start to increase as the weather improves and covid related restrictions are relaxed.

3. Enforcement

3.1. The Council has enforcement powers for use to rectify licence related problems including the power to revoke if necessary. The Council will continue to 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.

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

4.1. In addition to the extension of the pavement licensing powers described above the extension of the legislation until 30 September 2022 is also likely to mean that off-sales of alcohol will continue to be unregulated in certain circumstances.

4.2. 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.

4.3. 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.

4.4. As part of the Business and Planning Act 2020, all premises with on-licences were automatically 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.

4.5. 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.

4.6. 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.

4.7. 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.

4.8. 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.

5. Conclusions:

5.1. Pavement Licences

The Council must have a process in place in order to continue to accept and determine applications for pavement licences, and to deal with any issues arising with licensees. The application fee and duration for licences issued needs to be reviewed, and appropriate delegations need to remain in place so that the Council can continue to deliver this function until 30 September 2022.

5.2. Relaxations for licensed premises

Restrictions to off-sales of alcohol from licensed premises pubs are likely to continue to be suspended until 30 September 2022. 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.

6. Recommendations:

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