

**Classification:** Public

**Key Decision:** No

## **Gravesham Borough Council**

**Report to:** Licensing Committee

**Date:** 14 September 2020

**Reporting officer:** Mark Lees, Regulatory Services Manager

**Subject:** Pavement Licences and Off-Sales of Alcohol - Business and Planning Act 2020

### **Purpose and summary of report:**

This report provides an update on the provisions of the Business and Planning Act 2020 relating to pavement licences and associated off-sales of alcohol.

### **Recommendations:**

1. That Members note the content of the report.

## **1. Background**

- 1.1 On 25 June 2020 the Government introduced the Business and Planning Bill into the House of Commons. Within just four weeks, and following a series of amendments, the Bill received Royal Assent on 22 July.
- 1.2 The provisions of the Business and Planning Act 2020, which seek to promote economic recovery and growth, came into effect immediately and include:
  - 1.2.1 The introduction of a new, temporary, fast-track process for businesses selling (or proposing to sell) food and drink to obtain a 'Pavement Licence' from their local authority for the placement of furniture, such as tables and chairs, on the pavement outside their premises.
  - 1.2.2 An associated amendment to the Licensing Act 2003 to allow premises with a licence authorising 'on-sales' only (sales of alcohol for consumption on the premises) to automatically have 'off-sales' added to their licence.
- 1.3 Both provisions are intended to be temporary only until 30 September 2021.
- 1.4 The key elements of the Act relating to pavement licences and off-sales, as set out in associated Government Guidance, are set out below.

## **2. Pavement Licences**

- 2.1 The Act introduces a new legal framework for local authorities to issue 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.

- 2.2 The framework supersedes the previous framework for pavement licensing set out in the Highways Act 1980, previously administered by the Highway Authority, i.e. Kent County Council, but does not impact on licences already issued by them.
- 2.3 Local authorities are required to process applications for pavement licences within 10 working days; each application will be subject to a five working day consultation period followed by a five working day determination period.
- 2.4 All new licences will initially be granted for a three month period in order to strike a balance between supporting local businesses and the recovery of the economy, whilst safeguarding local residents, visitors and businesses from possible associated nuisance or anti-social behaviour.
- 2.5 Where a local authority does not determine an application within the permitted timescale however, a licence will be deemed to have been granted for a year, but not beyond 30 September 2021
- 2.6 Both councils and the Secretary of State may issue conditions in relation to pavement licences.
- 2.7 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 adverse effect in relation to pedestrian flow/access (with particular regard to the needs of disabled people and recommended minimum distances required for access by disabled people as set out in guidance issued by the Secretary of State), or access to relevant apparatus by statutory undertakers or electronic communications code network operators,
- 2.8 The local authority can serve a notice or revoke the licence where licence conditions are breached. A licence can also be revoked in other specific circumstances, such as where the local authority considers that :
  - 2.8.1 the location to the which the licence relates has become unsuitable
  - 2.8.2 as a result of the licence, there is a risk to public health or safety, or anti-social behaviour or public nuisance is being caused or risks being caused; or the highway is being obstructed (other than by anything done by the licence-holder pursuant to the licence)
  - 2.8.3 anything material stated by the licence-holder in their application was false or misleading
- 2.9 There is no statutory appeal process set out in the draft provisions, thereby providing councils with full discretion over whether to permit appeals and, if so, how. It has been agreed that the council will operate a senior officer internal appeal process whereby any appeals against officer decisions will be considered and determined by the Director, Communities.
- 2.10 Once a licence is granted, or deemed to be granted, the applicant will benefit from deemed planning permission to use the land for anything done pursuant to the licence while the licence is valid.
- 2.11 Despite the sizeable task of preparing to implement a brand new licensing regime, the council has been able, through the hard work and dedication of its officers, to

put in place the necessary arrangements to facilitate this in only a matter of weeks.

- 2.12 As part of these measures, the Licensing and Digital Teams have already developed and published a new Pavement Licences page on the council's website, which contains helpful information and links to the applicable local and national conditions, as well as a new online form including fee payment and document upload facilities:-

<https://www.gravesham.gov.uk/home/licensing/other-licences/pavement-licences/overview>

- 2.13 The Government Guidance on pavement licences can be viewed via the following link:

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

### **3. Off-sales of alcohol**

- 3.1 The automatic addition of 'off sales' to premises licences, and relaxation of some existing associated licence conditions, are temporary measures that will end on 30 September 2021 (unless further extended by the Government).

- 3.2 These provisions temporarily modify the Licensing Act 2003 under new sections - 172F to 172K '*Modification of premises licences to authorise off-sales for limited period.*'

- 3.3 The new off-sales permission will permit off-sales to be made at a time when licensed premises (not clubs covered by a Club Premises Certificate) are open for the purposes of selling alcohol for consumption on the premises, subject to a cut off time of 11pm or the closure time of an existing outside area, whichever is earlier.

- 3.4 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.

- 3.5 Licence holders intending to make use of this addition should however notify the council, prepare a statement which sets out their intentions to use the provisions, and display a statement alongside their premises licence summary.

- 3.6 The Licensing and Digital Teams have already developed and published a new page on the council's website, designed to assist licence holders in understanding the new provisions and meeting their obligations outlined in Para 3.5. As part of this, a new online form has been developed which will, upon submission, send the relevant information directly to the Licensing Team and create the requisite statement for licence holders to display:-

<https://www.gravesham.gov.uk/home/licensing/for-existing-licence-holders/temporary-provision-for-off-sales/overview>

- 3.7 There are certain exceptions set out in the Act 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.

- 3.8 The Act 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 (e.g. Police, Environmental Health, Licensing Authority, Trading Standards and others) can apply to the Local Authority for a summary (expedited) 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.
- 3.9 The Government Guidance on new temporary off-sales permissions, containing lots of helpful Questions and Answers, can be viewed via the following link:

<https://www.gov.uk/government/publications/guidance-for-temporary-alcohol-licensing-provisions-in-the-business-and-planning-bill/alcohol-licensing-guidance-on-new-temporary-off-sales-permissions#will-i-need-to-amend-my-premises-plan-to-show-new-outdoor-areas-where-customers-will-consume-alcohol>

#### **4. Delegation**

- 4.1 In accordance with the Council's Constitution, the discharge of such licensing functions have been delegated to the Planning Committee by Full Council.
- 4.2 On 2 September, Planning Committee delegated authority to the Director (Communities) to exercise the council's functions and powers in relation to pavement licences under the Business and Planning Act 2020 or any legislation replacing or amending the same or any regulations made thereunder.

#### **5. BACKGROUND PAPERS**

- 5.1 None

Anyone wishing to inspect background papers should, in the first place, be directed to Committee & Electoral Services who will make the necessary arrangements.

IMPLICATIONS	APPENDIX 1
<b>Legal</b>	As set out above
<b>Finance and Value for Money</b>	<p>The Council can, currently, charge a fee of up to £100 for each application under the Act. Given the low level of the fee, and the time taken in setting up the new regime, processing applications, and regulating, the application fee has been set at the maximum permitted level.</p> <p>There is currently no specific budget for setting up/implementing/regulating the new pavement licensing regime. All efforts will be made to keep any costs within existing budgets so there is currently no anticipated adverse impact on the MTFP. The situation will be duly reviewed during the annual budget review/setting process.</p>
<b>Risk Assessment</b>	<p>Appropriate delegations have been put in place to enable the council to exercise the functions and powers in relation to pavement licences. As the new off-licence provisions are introduced by way of amendments to the Licensing Act 2003, existing officer delegations are already suitable.</p> <p>The new provisions provide powers to councils to take action against licence holders where problems arise, as set out in the report.</p>
<b>Data Protection Impact Assessment</b>	<p><i>A data protection impact assessment (DPIA) should be carried out at the start of any major project involving the use of personal data or if you are making a significant change to an existing process.</i></p> <p>a. Does the project/change being recommended through this paper involve the processing of <a href="#">personal data</a> or <a href="#">special category data</a> or <a href="#">criminal offence data</a>? A definition of each type of data can be found on the Information Commissioner's Office website via the above links.</p> <p>b. If yes to question a, have you completed and attached a DPIA including Data Protection Officer advice? No</p> <p>c. If no to question b, please seek advice from your nominated DPIA assessor or the Information Governance Team at <a href="mailto:gdpr@medway.gov.uk">gdpr@medway.gov.uk</a>.</p>
<b>Equality Impact Assessment</b>	<p>a. Does the decision being made or recommended through this paper have potential to cause adverse impact or discriminate against different groups in the community? If yes, please explain answer. No</p> <p>b. Does the decision being made or recommended through this paper make a positive contribution to promoting equality? If yes, please explain answer. No</p> <p><i>In submitting this report, the Chief Officer doing so is confirming that they have given due regard to the equality impacts of the decision being considered, as noted in the table above</i></p>
<b>Corporate Plan</b>	<p>There are direct links to all three Objectives: #1 People, #2 Place and #3 Progress.</p>
<b>Climate Change</b>	<p>There are no direct links to climate change</p>

<b>Crime and Disorder</b>	Licensing regimes are designed to regulate licensable activities in such a way as to support the prevention/reduction of crime and disorder through the imposition of permissible conditions and appropriate enforcement.
<b>Digital and website implications</b>	The Licensing and Digital Teams have already created new webpages and online application/notification forms with fee payment and document upload facilities as necessary to assist service users and allow online/electronic applications to be made in a reliable and efficient way, that is consistent with many of the councils other online licensing application forms. This also satisfies Section (2)(1)(b) of the Act which requires applications for pavement licences to be sent to the authority using electronic communications.
<b>Safeguarding children and vulnerable adults</b>	Whilst there are no specific elements of the pavement licence regime relating to the safeguarding of children and vulnerable adults, licensing regimes in general provide a means of regulating, which links in with safeguarding duties and responsibilities. The Licensing Act 2003