



ADUR & WORTHING
COUNCILS

Joint Strategic Committee
7 July 2020
Agenda Item 4

Key Decision: Yes

Ward(s) Affected: All

Urgent Report

Promotion of Economic Recovery and Growth: Pavement Licences

Report by the Director for Communities

Executive Summary

1. Purpose

New legislation aimed at promoting economic growth and recovery is expected to be introduced within the next few days. It is likely to include responsibilities for District and Borough Councils in respect of pavement licence applications.

This report aims to brief the Joint Strategic Committee on the new Executive functions expected and seeks delegations to appropriate Officers to enable them to take required action on behalf of the Councils.

2. Recommendations

Subject to the Business and Planning Bill 2020 being enacted in its current form, or with minor amendments, the Joint Strategic Committee is recommended to:

2.1 Note the contents of the report and the new legal powers and responsibilities upon Adur District Council and Worthing Borough Council, relating to pavement licences;

2.2 Delegate authority to the Head of Wellbeing, in consultation with the Executive Members for Health and Wellbeing, to adopt a procedure for dealing with applications for pavement licences under the Business and Planning Act 2020, including provisions relating to fees, consultation, local conditions, appeals and enforcement;

2.3 Delegate authority to the Head of Wellbeing, to determine applications received by either Council, for pavement licences, under the Business and Planning Act 2020.

3.0 Context

- 3.1 In the light of the Covid-19 global pandemic, a UK 'lockdown' was implemented to stop the spread of the Coronavirus. As part of this lockdown, legislation was introduced which required all non essential shops, restaurants, cafe's and licensed premises to close. Many have been closed since March 2020 and the Government is now allowing many establishments to reopen with immediate effect, subject to certain requirements being in place.
- 3.2 To support the kick starting of the economy, the Government has been considering ways in which it can amend current licensing legislation to enable more premises to open in a safe and lawful manner, whilst maximising their commercial opportunities.
- 3.3 As a result the Government has recently introduced the Business and Planning Bill 2020. The new proposals include applications for pavement licences, to allow licence-holders to place removable furniture over certain highways adjacent to premises for certain purposes. The proposed new process introduces a streamlined and cheaper route for businesses, such as cafes, restaurants and bars, to secure a licence and place furniture on the highway. This will support them to operate safely while social distancing measures remain in place and provide much needed income over the summer months and protect as many hospitality jobs as possible.

- 3.4 It must be stressed that the Bill has not yet been given Royal Assent, and is not in force. It is expected to receive its second reading in the House of Lords on 6th July 2020 and if approved, it is likely to be implemented shortly afterwards.
- 3.5 The proposed legislation will require the Councils to act quickly and be in a position to engage in agile decision making. It is therefore considered prudent to seek the authority of the Joint Strategic Committee to deal with relevant licensing applications that may arise from this legislation if and when implemented, and to seek delegations to appropriate Officers to enable them to act accordingly.

4.0 Issues for consideration

4.1 Pavement Licences

Applications for pavement licences are presently granted primarily under Part 7A of the Highways Act 1980; the existing scheme is operated by West Sussex County Council as the Highway Authority and whilst they generally charge a fee for such applications, this is currently being waived.

The new legislation proposes an easier and quicker way for businesses to obtain a licence and places responsibility for the granting of these licences on Districts and Boroughs, under the Business and Planning Bill 2020.

4.2 Applicants

Businesses eligible for applying for pavement licences include all those that use their premises for the sale of food or drink for consumption so would include pubs, cafes, bars, restaurants, snack bars, coffee shops and ice cream parlours. A pavement licence would permit the business to use furniture placed on the highway to sell or serve food or drink. The furniture cannot be of a fixed structure.

4.3 Fees

The draft legislation provides that a fee can be charged for processing a pavement license. The fee may be set locally, but is capped at a maximum of £100. It is to be noted that WSCC are currently waiving fees payable under the existing legislation for such applications. It is proposed that Adur and Worthing Councils also waive such fees for 2020 and review the fees for 2021, delegating this decision to the Head of Wellbeing in consultation with the Executive Members for Health and Wellbeing.

4.4 Consultation

The draft process provides that a public consultation process must be undertaken upon receipt of an application. The consultation period is 7 calendar days (excluding bank holidays), commencing on the day after the application is made ie. the day the application is sent electronically rather than necessarily received. This is a significant reduction on the current legislation that provides for a 28 day consultation period.

The requirement for consultation is that the applicant is required to affix a notice to the premises on the day they submit their application and it must remain in place for the duration of the consultation period.

The Local Authority is also required to consult with the Highways Authority, and such other persons as they consider appropriate. The Local Authority is required to publish the application on their website. Members of the public may make representations to the Local Authority during the consultation period and these must be taken into account in determining the application.

4.5 Determination

Following the consultation period, the draft process provides for a determination period of 7 calendar days (excluding bank holidays), starting with the first day after the public consultation period ends. The Local Authority may grant the application for a pavement licence for a minimum of 3 months, and for a maximum period of up to 30th September 2021.

The legislation provides scope for local conditions to be imposed to make it possible to approve an application which would otherwise be unacceptable. The Secretary of State is also able to publish national conditions.

The outcome of an application may be to grant the licence in accordance with the application, to grant the licence for some or all of the highway, and impose conditions, or to refuse the application. There is no statutory appeal process but an Authority may wish to consider the scope of an internal review process such as a route of appeal to the Licensing Committee.

Crucially, if the local authority does not determine the application before the end of the determination period, the licence is deemed to have been granted in accordance with the application, for a period of 12 months, (subject to not going beyond 30th September 2021).

4.6 Duration

The legislation is expected to be in place for a temporary period and to support businesses while social distancing measures may still be in place. It is likely the new process will be in place until the end of September 2021 giving certainty to businesses for the foreseeable future, and allowing them sufficient time to apply for new licences under the existing process if they want to extend beyond that time period.

4.7 Enforcement

Once granted, the Councils will have an enforcement role and will have the power to revoke licences in certain circumstances such as breach of condition or where:-

- There are risks to public health or safety – for example by encouraging users to breach government guidance on social distancing by placing tables and chairs too close together;
- the highway is being obstructed (other than by anything permitted by the licence);
- there is anti-social behaviour or public nuisance – for example, the use is increasing the amount of noise generated late at night and litter is not being cleaned up;
- it comes to light that the applicant provided false or misleading statements in their application – for example they are operating a stall selling hot food and had applied for tables and chairs on which drinks could be consumed; or
- the applicant did not comply with the requirement to affix the notice to notify the public for the relevant period.

The local authority may also revoke the licence where all or any part of the area of the relevant highway to which the licence relates has become unsuitable for any purpose for which the licence was granted or deemed to be granted. For example, the licensed area (or road adjacent) is no longer to be pedestrianised.

Enforcement will be undertaken in line with the Public Health and Regulation Enforcement Policy in a proportionate and pragmatic way.

4.8 Other matters

The proposed legislation provides that if a pavement licence is granted, planning permission is deemed to have been granted. Further if an alcohol

licence is in place for the premises, it is deemed to extend to the area of the pavement licence.

5.0 Engagement and Consultation

- 5.1 Consultation requirements are set out above. However it should be noted that officers will continue to engage and liaise with WSCC Highways, Sussex Police and the Worthing Town Centre Initiative in relation to the implementation and management of these measures.

6.0 Financial Implications

- 6.1 The administration and the enforcement of the licences will be undertaken within existing resources and so there are no budgetary implications arising from this report.

7.0 Legal Implications

- 7.1 The Business and Planning Bill 2020 had its first reading in the House of Lords on 30th June 2020. It's second reading is expected to take place on 6th July and it is likely to be given Royal Assent and be in force shortly after.
- 7.2 The provisions of the Business and Planning Bill 2020 in respect of pavement licences are set out at paragraph 4 to this report.
- 7.3 In accordance with the Local Government Act 1972 as amended, only items on an Agenda which have been published 5 clear days before the day of a meeting can be considered at that meeting. However, the Chairperson of the meeting is able to add urgent items to the Agenda, in accordance with section 100B4b) of that Act. Urgent items are defined as being those items that by reason of special circumstance have arisen since the dispatch of the Agenda. The Joint Strategic Committee is asked to accept this item onto the Agenda as an Urgent Item. The special circumstance being that the proposed legislation was not sufficiently advanced to be considered at the time of the agenda publication.
- 7.4 It is likely that this decision is a Key decision in accordance with Article 12 of the Councils Constitutions, as the matter is likely to significantly affect more than one Ward. There has been insufficient time to include the matter on the forward plan for a period of 28 days. In accordance with paragraph 15.1 of the Access to information Regulations the Director for Communities has therefore

sought the agreement of the Joint Chairmen of the Joint Overview and Scrutiny Committee that the taking of the decision cannot reasonably be deferred.

Background Papers

The Bill:-<https://publications.parliament.uk/pa/bills/lbill/58-01/119/5801119.pdf>

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

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

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Sustainability & Risk Assessment

1. Economic

- The Bill, when enacted, will encourage a fast track route to allowing businesses to trade on the street, without a fee or undue red tape, thus helping to kick start the local economy

2. Social

2.1 Social Value

- The hospitality sector will be able to trade on the pavement thereby allowing businesses to continue to trade safely with the Covid 19 restrictions in place on social distancing. This may be the difference between a business failing or not, and will help retain jobs in the sector.

2.2 Equality Issues

- The Covid 19 pandemic has increased the health and economic inequalities that already exist in society and many low paid workers are employed in the hospitality sector which has been hit very hard by c19 restrictions. Enabling businesses to continue trading will help keep low paid workers in employment.

2.3 Community Safety Issues (Section 17)

- The Councils have powers to revoke licences if there is a Statutory Noise Nuisance, or Anti-social behaviour - noise/littering.

2.4 Human Rights Issues

- There will need to be a balance struck between the businesses taking advantage of the deregulation of traditional tables and chairs legislation and the potential for noise and other nuisance to local residents. Licences can be revoked where informal action has failed to resolve a nuisance situation.

3. Environmental

- There is potential for uncontrolled litter in the public domain and an increase in ambient noise levels.

4. Governance

- This legislation will align with 'Platforms For Places Going Further' to stimulate economic recovery and the 'And Then' priorities 'Bouncing back in post pandemic Adur & Worthing'.
- There are potential implications for resourcing the Councils' Licensing and Environmental Health functions that will be tasked with administering and enforcing this new regime. At present the take up is unknown.