

<b>General Licensing Committee Meeting</b>	
<b>Meeting Date</b>	03 August 2020
<b>Report Title</b>	Implications of Business and Planning Act 2020
<b>Cabinet Member</b>	Cllr Richard Palmer, Cabinet member for Community
<b>SMT Lead</b>	Nick Vickers, Chief Finance Officer
<b>Head of Service</b>	Nick Vickers, Chief Finance Officer
<b>Lead Officer</b>	Della Fackrell, Resilience & Licensing Manager
<b>Key Decision</b>	No
<b>Classification</b>	Open
<b>Recommendations</b>	<ol style="list-style-type: none"> <li>1. To agree the Pavement Licence conditions and Application process and fee as outlined in Appendix I and II.</li> <li>2. To give temporary delegated authority to the Resilience and Licensing Manager until 30 September 2021 to consider applications made under the Business and Planning Act 2020 against the criteria set out in this report and appendices and to grant or refuse licences or take any action permitted under that Act, including but not limited to , attaching such conditions as may be required to bring the application into conformity with the criteria.</li> </ol>

## **1 Executive Summary**

1.1 On 25 June 2020, The Government announced relaxations to planning and licensing laws to help the hospitality industry recover from the coronavirus COVID-19 lockdown.

1.2 The Business and Planning Act 2020 proposes to make it easier for premises serving food and drink such as bars, restaurants, cafes and pubs to seat and serve customers outdoors through temporary changes to planning procedures and alcohol licensing.

## **2 Background and Issues**

2.1 The Covid-19 pandemic has affected businesses across the economy causing many to cease trading for several months while others have had to significantly modify their operations.

2.2 For the hospitality industry these measures will provide some much-needed flexibility as they seek to reopen fully under social distancing requirements from 4 July 2020.

2.3 The relaxation of licensing requirements to assist businesses in increasing their 'outdoor' offerings so as to maximise capacity whilst maintaining social distancing is unlikely to reduce complaints about noise and other ASB which the Council and Police investigate and respond to. This will include licensed premises being able to use car parks and terraces as seating areas.

### **3 Automatic Off-sales entitlement**

3.1 Under the Licensing Act 2003, premises are licensed for the sale of alcohol for consumption either 'on' the premises, 'off' the premises or both. The measures included in this Act modify provisions in the Licensing Act 2003 to provide automatic extensions to the terms of on-sales alcohol licences to allow for off-sales. This is a temporary measure to boost the economy, with provisions lasting until 30 September 2021.

3.2 These measures will make it possible for licensed premises that have only an on-sales licence to sell alcohol for consumption 'off' the premises without making an application or paying a fee. This will allow businesses to trade whilst keeping social distancing measures in place inside.

3.3 Premises which have had an application for an off-sales permission refused or had their off-sales permission excluded by variation or at review within the last three years, will be excluded from this licence extension. This is a safeguard to ensure that where it has recently been decided that the licensee should not have the permission, they do not receive it through this legislation

3.4 The default hours in which off-sales will be permitted will be up to 11pm, or until the current on-sales licensing hours for the premises end, whichever is the earlier, however the premises must be open for the primary purpose of on-sales trade. New off-sales permission will not apply to times when a premises licence does not allow sales of alcohol for consumption in outdoor areas of the premises. Any premises wishing to open for longer hours must still apply for a licence variation.

3.5 The provisions will also apply temporary conditions to licences where there is a pre-existing permission for off-sales. The conditions will set the hours of off-sales to match those for on sales, allow off-sales of alcohol in open containers and allow deliveries of alcohol to residential or work buildings. Those conditions will suspend existing conditions that are more restrictive. So, for example, an existing condition that allowed off-sales only in closed containers would be suspended to allow sales in open containers. The existing conditions that prevent these matters are suspended until 30 September 2021.

3.6 If there were problems of crime and disorder, public nuisance, public safety or the protection of children arising from how the premises operated using the new permission, any responsible authority, including the police or environmental health, could apply for a new off-sales review. The off-sales review process is modelled on the existing summary review process. In the event that an off-sales review is triggered, it will only relate to off-sales authorised by virtue of these provisions, or conditions which have effect by virtue of these provisions: it cannot be used to revoke the existing licence or modify pre-existing licence conditions.

### **4 Pavement Licence**

4.1 The Act also introduces a new, temporary, fast-track process for these businesses to obtain permission, in the form of a "pavement licence", from Swale Borough Council for the placement of furniture such as tables and chairs on the pavement outside their premises which will enable them to maximise their capacity whilst adhering to social distancing guidelines.

4.2 Previously, tables and chairs permissions were granted as Pavement licences by Kent County Council, the Highways Authority, under Part 7A of the Highways Act 1980. The fee varies between local authorities and there is a time consuming 28 day consultation period.

4.3 The new temporary measure places a cap on the application fee for businesses, and introduces a new 14-day determination period, ensuring that businesses can obtain licences in a timely and cost effective (for the business) manner aiding to their financial recovery.

4.4 Any application for a Pavement Licence that is not determined within the 14 day period will have deemed consent for one year.

4.5 The cost of the permission is capped at £100.

4.6 There are enforcement powers contained in the Act to enable the Local Authority to attach conditions, and revoke licences for breaches of conditions, or if the highway is no longer suitable for this use.

4.7 The temporary permissions will last until 30 September 2021.

## **5. Resource Implications**

5.1 The Licensing Service has produced application forms, conditions and website information and is now ready to process any application received under the Act, which forms part of the wider work for the reopening of the licensed trade as lockdown restrictions are eased.

5.2 Newsletters are sent to the licensed trade as new guidance and regulation is released from government.

5.3 No other immediate action is required to allow premises to undertake 'off' sales, this is an automatic entitlement and the Council does not have to issue another licence.

5.4 The introduction of the new 'pavement licence' administered by Swale Borough Council however will require the Council to divert resource into establishing and administering this regime.

## **6. Consultation**

6.1 See Appendix II for full details of the consultation procedure.

## 7. Implications

Issue	Implications
Corporate Plan	Making Swale a better place A Council to be proud of
Financial, Resource and Property	There could be some resource impacts on the council but it is unlikely to be of any significance at this time
Legal and Statutory	Business and Planning Act 2020
Crime and Disorder	Fulfilling powers and duties under the Business and Planning Act 2020
Environmental Sustainability	No implications
Health and Wellbeing	No implications
Risk Management and Health and Safety	It is important that Swale BC has a robust and accountable regulatory regime in relation to off sales and pavement licences in order to ensure fair trading, prevent crime and to protect consumers.
Equality and Diversity	The Council has a legal obligation under section 149 of the Equality Act 2010 to have due regard to eliminate unlawful discrimination and to promote equality of opportunity and good relations between persons of different groups.
Privacy and Data Protection	As the register will involve the processing of personal data, GDPR and Data Protection Act 2018 principles will need to be followed

## 8 Appendices

Appendix I: Pavement Licence Conditions

Appendix II: Application Procedure and Determination of Pavement Licences

## 9 Background Papers

Business & Planning Act 2020