

## Cheltenham Borough Council

Council – 15 July 2020

### Applications for Pavement Licences under the Business and Planning Bill 2020 and Responsibilities for Functions

<b>Accountable member</b>	<b>Cabinet Member Development and Safety, Councillor Andrew McKinlay</b>
<b>Accountable officer</b>	<b>Chief Executive, Gareth Edmundson</b>
<b>Ward(s) affected</b>	<b>All</b>
<b>Key/Significant Decision</b>	<b>N/A</b>
<b>Executive summary</b>	<p>The Business and Planning Bill 2020 (“the Bill”) once in force, will introduce a number of changes to potentially promote post-lockdown economic recovery and growth.</p> <p>Part 1 of the Bill includes provisions that will enable the operators of licensed premises, via a new standalone mechanism, to secure for a limited period, a “Pavement Licence”. The new Pavement Licences will allow additional outdoor space to be lawfully licensed and used by premises. Under the provision an application must be determined by a local authority within 7 days of receipt of the application.</p> <p>The proposed delegation below will allow for the determination of any application for a Pavement Licence under that the new legislation once it is in force.</p>
<b>Recommendations</b>	<ol style="list-style-type: none"><li><b>1. That the Director of Environment, in consultation with the vice-chair of the Licensing Committee, be given delegated authority to determine applications for Pavement Licences under the Business and Planning Act 2020.</b></li><li><b>2. That the Borough Solicitor be authorised to make any textual or other amendments which are necessary to ensure the accuracy, consistency and legality of the Constitution when incorporating the revisions referred to in 1. above</b></li></ol>
<b>Financial implications</b>	<p>The amendment under the Business and Planning Act 2020 means that we are only able to charge for the new licenses at £100 each. The worst case would be that we would lose £18k in income from these licenses in 2020/21. Some of this loss should be able to be covered by the new Government scheme on Lost Income for Councils which details are still awaited.</p> <p><b>Contact officer: Andrew Knott, <a href="mailto:Andrew.Knott@publicagroup.uk">Andrew.Knott@publicagroup.uk</a></b></p>

<b>Legal implications</b>	The legal background is contained within the report. The implementation of the recommendation regarding decision making will enable the authority to determine applications in accordance with the prescribed timescale.  <b>Contact officer: <a href="mailto:legal.services@tewkesbury.gov.uk">legal.services@tewkesbury.gov.uk</a>, 01684 272012</b>
<b>HR implications (including learning and organisational development)</b>	None identified
<b>Key risks</b>	As outlined in appendix 1
<b>Corporate and community plan Implications</b>	
<b>Environmental and climate change implications</b>	N/A
<b>Property/Asset Implications</b>	The proposed recommendations will not have a direct impact on property matters.

## 1. Background

- 1.1 Although historically operators have always been able to apply for permission to place objects i.e. tables and chairs on the highway under Part 7A Highways Act 1980 in response to the current Covid 19 pandemic the Government is introducing new legislation i.e. the Business and Planning Bill 2020 to allow additional outdoor space to be lawfully licensed and used by premises through a system of Pavement Licences.
- 1.2 Once the Bill is enacted the new legislation will introduce a 'streamlined' application process which will enable the operators of pubs, cafes and restaurants to apply for a Pavement Licence. A business which uses (or proposes to use) premises for the sale of food or drink for consumption (on or off the premises) can apply for a licence. Businesses that are eligible include: public houses, cafes, bars, restaurants, snack bars, coffee shops, and ice cream parlours.
- 1.3 A licence permits the business to use furniture placed on the highway to sell or serve food or drink and/or allow it to be used by people for consumption of food or drink supplied from, or in connection with the use of the premises.
- 1.4 The Bill requires applications for Pavement Licences to include certain prescribed information but caps application fee to £100.
- 1.5 A short 7 day consultation period and publication of the application is also required. It is currently a minimum of 28 calendar days under the Highways Act 1980.
- 1.6 If a local authority determines an application before the end of the determination period (which is 5 working days, beginning with the first day after the public consultation period, excluding public holidays) the authority can specify the duration of the licence, subject to a minimum duration of 3 months. The expectation is that local authorities will grant licences for 12 months or more unless there are good reasons for granting a licence for a shorter period such as plans for future changes in the use of road space.
- 1.7 If a local authority does not determine the application before the end of the determination period

(which is 5 working days beginning with the first day after the public consultation period (excluding public holidays), the licence is deemed to have been granted for a year (but not beyond 30 September 2021) and the business can place the proposed furniture such as tables and chairs within the area set out in the application for the purpose or purposes proposed.

- 1.8 The Pavement Licence will only permit the placing of furniture on the highway. Other regulatory frameworks still apply such as the need for alcohol licences, street trading applications the need to comply with registration requirements for food businesses. If the applicant has a licence to serve alcohol on-premises temporary amendments to the Licensing Act 2003 will allow them to sell alcohol for consumption off the premises without needing to apply for a variation of their licence. Once a licence is granted, or deemed to be granted, the applicant will also benefit from deemed planning permission to use the land for anything done pursuant to the licence while the licence is valid.
- 1.9 A local authority may also grant a Pavement Licence subject to conditions that it considers reasonable but in any event such licences will be deemed to be subject to a “no-obstruction condition”.
- 1.10 Gloucestershire County Council as the Highways Authority has delegated authority to Cheltenham Borough Council to determined applications in respect applications within the Borough of Cheltenham.
- 1.11 Currently where applications are received and objections are raised the application is determined by the Licensing Committee. Given the timescale for determining an application and the provision for deemed consent if a determination is not made within the prescribed it is proposed and authority to determine all applications is delegated to the Director of Environment.
- 1.12 There is no statutory appeal process for the decisions made under the Bill. The draft guidance states that councils may wish to consider the scope for an internal review process, for example permitting appeals to their Licensing Committee.
- 1.13 To this end, an applicant aggrieved by a decision by the Director of Environment, in consultation with the vice-chair of the Licensing Committee, to refuse a consent can apply to the Miscellaneous Licensing Sub-Committee for a review of this decision.
- 1.14 The process for referring subsequent appeals to the Miscellaneous Licensing Sub-Committee will follow the normal committee timescales.

## **2. Reasons for recommendations**

- 2.1 To facilitate the decision making of applications received for Pavement Licences following the Royal Assent and implementation of any legislation arising from the Bill.

## **3. Alternative options considered**

- 3.1 Not making the changes which would impede continuity of decision making.

## **4. Consultation and feedback**

- 4.1 The Mayor, Group Leaders, Constitution Working Group, Chair of the Licensing Committee and One Legal.

## **5. Performance management –monitoring and review**

- 5.1 There are no performance management issues arising from this report.

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<b>Appendices</b>	1. Risk Assessment
<b>Background information</b>	1. <a href="#">Cheltenham Borough Council Constitution</a> 2. <a href="#">Draft planning guidance to support the Business and Planning Bill</a> 3. <a href="#">Business and Planning Bill 2019-21</a>

The risk				Original risk score (impact x likelihood)			Managing risk				
Risk ref.	Risk description	Risk Owner	Date raised	Impact 1-5	Likelihood 1-6	Score	Control	Action	Deadline	Responsible officer	Transferred to risk register
	If Council does not approve the change of delegation, then the authority might not be able to adequately administer licensing applications under the provisions of the draft legislation which might lead to tacit consent or automatic refusals as alternatives.	Director of Environment	15 July 2020	2	4	8	Reduce	Passing resolution			
	If Council does not approve the change of delegation, then the authority might not be able to adequately administer licensing applications under the provisions of the draft legislation which might lead to reputational damage to the authority.	Director of Environment	15 July 2020	2	4	8	Reduce	Passing resolution			
<b>Explanatory notes</b>											
<p><b>Impact</b> – an assessment of the impact if the risk occurs on a scale of 1-5 (1 being least impact and 5 being major or critical)</p> <p><b>Likelihood</b> – how likely is it that the risk will occur on a scale of 1-6 (1 being almost impossible, 2 is very low, 3 is low, 4 significant, 5 high and 6 a very high probability)</p> <p><b>Control</b> - Either: Reduce / Accept / Transfer to 3rd party / Close</p>											