

# South Lakeland District Council

Council 28th July 2020

## Business and Planning Act 2020

### Pavement Licence Policy

---

<b>Portfolio:</b>	Cllr Jonathan Brook, Deputy Leader and Housing and Innovation Portfolio Holder Cllr Robin Ashcroft Economy Culture and Leisure Portfolio Holder
<b>Report from:</b>	Simon Rowley, Director Customer and Commercial Services
<b>Report Author:</b>	Gareth Candlin – Operational Lead - Specialist Services
<b>Wards:</b>	All
<b>Forward Plan:</b>	Key decision - The decision does not appear in a Forward Plan

---

#### 1.0 Expected Outcome

- 1.1 The decision will enable the Council to put in place the necessary procedures and authorities to meet its obligations under the legislation.
- 1.2 This would include changes to pavement licensing, off license sales of alcohol, expiry dates on unimplemented planning permission and changes to conditions relating to hours of construction on developments
- 1.3 The Government have introduced the legislation to help promote a speedy restart to the economy.

#### 2.0 Recommendation

##### 2.1 It is recommended that Council:-

- (1) **Agree the draft Pavement Licensing Policy in Appendix 1 and delegates authority to the Director of Customer and Commercial Services to undertake final design and implement the procedures.**
- (2) **Agree to delegate authority to determine applications for pavement licenses under the Business and Planning Act 2020 to the Operational Lead Specialist Services, consideration of all appeals and any necessary enforcement/revocation action to be delegated to the Director of Customer and Commercial Services.**
- (4) **Approve the introduction of a new charge of £100 per application for pavement licences under the Business and Planning Act 2020 and requests Council amend the 2020/21 fees and charges accordingly.**
- (5) **Authorise the Legal Governance and Democracy Lead Specialist (Monitoring Officer) to make any required constitutional amendments**

**and changes to the scheme of delegation as described in the report and to ensure the Director of Customer and Commercial Services has the appropriate authority to implement the legislation and any further statutory instruments or guidance.**

### **3.0 Background and Proposals**

- 3.1 As part of the national economic recovery, the Government enacted the Business and Planning Act 2020. This act covers 4 key areas; pavement licencing, off sales of alcohol, extension of unimplemented planning permission and listed building consent, the right to apply to extend construction hours.
- 3.2 A detailed overview of the specific changes is included in the background documents.
- 3.3 The Business and Planning Act 2020 recently received royal assent and the licensing provisions have immediate effect. The Council is required to put in place appropriate delegation arrangements for the Pavement Policy and for the changes to planning controls and rules. The report provides for the necessary constitutional arrangements and amendments to the scheme of delegation to be made. This will ensure that we can process and determine applications.

#### **Pavement Licenses**

- 3.3 The most immediate and significant burden placed upon the Council is concerned with Pavement Licences. It is imperative that the Council puts in place the necessary procedures and decision making to process applications now that the legislation is enacted. The legislation will prescribe a short period of time in which the Council will consult on and determine the application. A failure to determine an application in the prescribed period will result in deemed consent.
- 3.4 Officers are finalising on the policy which will address scheme design, application, consultation and determination procedures. The final draft of the policy is attached at Appendix 1. In order to get this up and running swiftly, it is recommended that the final design of these matters is delegated to the Director of Customer and Commercial Services.
- 3.5 Due to the requirements to determine applications in a short period of time, it is necessary to delegate this to officers. It is recommended that determination of applications is delegated to the Operational Lead for Specialist Services. In his absence, the existing scheme of delegation will enable this to be carried out by another officer determined by the Director of Customer and Commercial Services.
- 3.8 There is no right to appeal a refusal in the legislation, the guidance gives the Council the right put in place an appeal process if it see fit. It is proposed that appeals will be heard by the Director of Customer and Commercial Services for expedience.
- 3.9 The legislation will provide the means for levying an application fee, capped to a maximum of £100. The Council will need to undertake an assessment of the application, consult, address consultee comments, determine and monitor compliance with the licence. It is considered that a £100 fee is appropriate contribution towards the cost of the Council incurred by implementing the legislation. It is recommended that a £100 fee is introduced.

#### **Licensing changes – off sales of alcohol**

- 3.10 The provisions in the Act temporarily modify the Licensing Act 2003 to provide an automatic extension to the terms of most premises licences which only permit the

sale of alcohol for consumption on the premises to allow the sale of alcohol for consumption off the premises.

- 3.11 The new off-sales permission will permit off-sales to be made at a time when the licensed premises 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. Measures also temporarily suspend existing licence conditions in so far as they are inconsistent with the new off-sales permission.
- 3.12 The new off-sales permission is authorised under section 172F(2) of the Licensing Act 2003 in respect of on-sales licences and section 172F(5) of the Licensing Act 2003 in respect of dual licences.

### **Planning Permission changes**

- 3.14 The Business and Planning Act 2020 temporarily modifies the Town and Country Planning Act 1990 and the Planning (Listed Buildings and Conservation Areas) Act 1990 to enable certain planning permissions and listed building consents in England which have lapsed or are due to lapse during 2020 to be extended.
- 3.15 Under section 93A of the Town and Country Planning Act 1990, unimplemented planning permissions with time limits for implementation which were due to lapse between 19 August 2020 (when the provisions came into force) and 31 December 2020 are extended to 1 May 2021. This happens automatically, with no requirement to obtain Additional Environmental Approval.
- 3.16 In addition, unimplemented planning permissions with time limits for implementation which passed between 23 March 2020 and 19 August 2020 are also restored and the time limit extended to 1 May 2021. This also applies to outline planning permission and reserved matters applications.
- 3.17 All listed building consents with a time limit for implementation between 23 March 2020 and 31 December 2020 will be extended to 1 May 2021. Listed building consents will not be subject to a requirement to obtain Additional Environmental Approval.
- 3.18 These time limits are extended automatically and do not require a decision of the council, therefore there is not a need to amend the scheme of delegation.

### **Change to construction working hours**

- 3.19 Section 74B of the Town and Country Planning Act 1990 provides a temporary, fast track deemed consent route for developers to apply to local planning authorities to vary existing conditions, or the details submitted under a condition, that limit construction site working hours. Local authorities have 14 calendar days to consider such applications.
- 3.20 If an application is approved, this will temporarily amend planning restrictions on construction working hours until 1 April 2021, unless either another earlier date has been requested by the applicant or is decided upon by the local planning authority, with the agreement of the applicant.
- 3.21 If the local planning authority does not determine the application within 14 days (excluding public holidays), the revised working hours are deemed to have been consented to and construction can take place in accordance with these new hours.
- 3.22 The guidance to local planning authorities states that they should not refuse applications to extend working hours until 9pm, Monday to Saturday without very

compelling reasons. In some cases, such as in areas without residential properties, extending working hours beyond this, including allowing 24-hour working where appropriate, may be justified. In all cases, sympathetic site management should be demonstrated to mitigate local impacts and local authorities should use their best endeavors to facilitate such requests.

- 3.23 The new legislation gives powers under existing legislation (Section 74B of the Town and Country Planning Act 1990) for the local planning authority to take the decision and therefore no amendments is needed to the scheme of delegation.

#### **4.0 Consultation**

- 4.1 The respective Chairs of Committees and Portfolio Holders have been consulted and are supportive of the proposals.

#### **5.0 Alternative Options**

- 5.1 The legislation is now enacted and as such the Council is required to implement the legislation appropriately. Council is the decision maker and as such there are no alternative options to this process.

#### **6.0 Links to Council Priorities**

- 6.1 The Council seeks to promote sustainable and resilient economic activity. The intended impact of the legislation is to enable parts of the hospitality sector, construction and development sector to operate effectively within the current Covid 19 restrictions. In this regard, the scheme will assist economic recovery and resilience through the next few months.

#### **7.0 Implications**

##### **Financial, Resources and Procurement**

- 7.1.0 The proposal is to adopt a fee of £100 per application for the pavement licences. This will offset the Council's additional costs in administrating and overseeing compliance with the requirements of the pavement licencing element of the legislation.
- 7.1.2 The Council will minimise its costs in delivering the scheme with the use of digital enabled procedures. The Council does not have an alternative but to deliver the scheme due to it being a legislative requirement. There may potentially be additional financial resources provided by Government as new burdens grant to offset any costs above the application fee.
- 7.1.3 The additional cost burdens of the remainder of the legislation will have to be absorbed into existing service budgets.
- 7.1.4 There is no provision within the act to charge for processing applications submitted under Section 74B of the Town and Country Planning Act 1990 and therefore the Council will need to manage this within existing service budgets.

##### **Human Resources**

- 7.2.0 The pavement licencing procedure will identify the roles within the Council's operating model which will be required. Temporary additional resources will be considered where necessary and which recognise other increased demands from COVID 19 recovery which will impact on staffing resources.
- 7.2.1 There will be not additional requirement to deal with the off licencing or extensions to existing planning permissions and the requirement to process applications under Section 74B of the Town and Country Planning Act 1990 will be managed within existing officers capacity.

## Legal

7.3.0 Legal advice has been provided to officers drafting the scheme policy and procedures to ensure compliance with other areas of legislation.

## Health, Social, Economic and Environmental

7.4.0 Have you completed an Health, Social, Economic and Environmental Impact Assessment? No

7.4.1 If you have not completed an Impact Assessment, please explain your reasons: The Council does not have a choice whether to implement a scheme. This report seeks approval for the means by which to put a scheme in place. Health Social, Economic and environmental impacts will be fully considered in the design of the scheme, particularly through the conditions the Council may attach to permissions.

## Equality and Diversity

7.5.0 Have you completed an Equality Impact Analysis? Yes (Appendix 2)

## Risk

Risk	Consequence	Controls required
The Council will not be in a position to receive and determine applications as the new legislation is enacted.	Non determination of applications – leading to deemed consents.  Reputation damage by not being able to respond to applications in timely manner.	Proceed with the design work pending the approval of council so the scheme is ready to go live if Council approves the report.
The council does not determine the applications under Section 74B of the Town and Country Planning Act 1990 within 14 days.	Deemed consent exists and the applicant would get the automatic right to extend.	Proper resourcing to process applications in a timely manner.
Public concern about off licencing rules, pavement licences and extended constructions hours	Reputational damage, trust within communities eroded.	Communications campaign explaining the new rules and reasons for them.  Hold applicants to account to the clauses that require them to mitigate effects on community where possible.

## Contact Officers

Gareth Candlin – Operational Lead – Specialist Services

Simon Rowley – Director of Customer and Commercial Services

## Appendices Attached to this Report

(delete if no appendices attached)

Appendix No.	Name of Appendix
1	Draft – Pavement Licensing Policy
2.	Equality Impact Assessment – Pavement Licensing Policy.

### Background Documents Available

Name of Background document	Where it is available
Guidance on Pavement licencing Published 22/07/2020	<a href="https://www.gov.uk/government/publications/pavement-licences-draft-guidance/draft-guidance-pavement-licences-outdoor-seating-proposal">https://www.gov.uk/government/publications/pavement-licences-draft-guidance/draft-guidance-pavement-licences-outdoor-seating-proposal</a>
Guidance on off licence alcohol sales Published 22/07/2020	<a href="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">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</a>
Guidance on expiry dates on unimplemented planning permission Published 22/07/2020	<a href="https://www.gov.uk/government/publications/extension-of-certain-planning-permissions-draft-guidance/extension-of-certain-planning-permissions-draft-guidance">https://www.gov.uk/government/publications/extension-of-certain-planning-permissions-draft-guidance/extension-of-certain-planning-permissions-draft-guidance</a>
Guidance on changes to conditions relating to hours of construction on developments Published 22/07/2020	<a href="https://www.gov.uk/government/publications/construction-working-hours-draft-guidance/draft-guidance-construction-site-hours-deemed-consent">https://www.gov.uk/government/publications/construction-working-hours-draft-guidance/draft-guidance-construction-site-hours-deemed-consent</a>