



SIGNED OFF BY	LUCI MOULD
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TO	Chief Executive Officer
DATE	24 th July 2020
EXECUTIVE MEMBER	Cllr Mrs N Bramhall

KEY DECISION REQUIRED	No
WARDS AFFECTED	All Wards

SUBJECT	Business and Planning Act 2020
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RECOMMENDATIONS	
(i)	<p>The Chief Executive (or nominated deputy) to exercise delegated authority to amend the Council's Constitution as detailed in Annex 1 in respect of the Business and Planning Act 2020 (the Act) for:</p> <ul style="list-style-type: none"> a. Authorised officers to receive, consider and determine pavement licence applications and enforce and revoke pavement licences where necessary including the recovery of costs; b. Authorised officers to set, vary and review conditions to be attached to pavement licences c. Licensing Sub Committee to consider and determine 'off' sales licenced review applications from responsible authorities and interested parties. d. Authorised officers to receive, consider and determine applications for extensions to construction working hours and planning application implementation periods. e. This amendment to the Council's Constitution to be in force until 30 September 2021 or other date as set out in the Act or subsequent related legislation. f. The Chief Executive's nominated deputy to be Luci Mould (in her absence, the deputy will be a Director of the Council).

REASONS FOR RECOMMENDATIONS

The recommendations above will ensure the Council is ready to set conditions, receive, determine and act on pavement licence applications and licences, under the Act and authorise the Licensing Sub Committee to consider determine 'off sales' Review applications.

It will also allow the Council to receive, determine and act on the new planning process arising from the Act.

EXECUTIVE SUMMARY

The Chief Executive Officer is being asked to use their delegated authority due to the urgency the Act will present once in force. The Council needs to make the necessary changes to delegations and internal processes now to ensure it is ready to deal with any necessary applications from individuals and businesses.

Pavement Licence applications under the Act are subject to 7 days of consultation and then a decision has to be taken within a further 7 days: otherwise the licence is deemed to have been granted for a year. (Only Christmas Day, Good Friday and bank holidays don't count so, generally, the whole process takes two weeks maximum.) This Council needs to be ready to start receiving licence applications, and therefore will need to determine what local conditions apply. In the absence of local conditions, there is only one national condition about maintaining sufficient access for disabled people and others along pavements.

For Planning, the Act introduces new forms of application to allow for construction working hours to be extended and for the implementation period of planning permissions to be extended.

The Council does not have the Act's provisions in its extant schemes of delegation or constitution.

The Chief Executive has authority to approve the above recommendations

STATUTORY POWERS

1. Business and Planning Act 2020
2. Licensing Act 2003
3. Town and Country Planning Act 1990
4. Planning (Listed Buildings and Conservation Areas) Act 1990

BACKGROUND

1. On 25 June, The Government announced relaxations to planning and licensing laws to help the hospitality industry recover from the coronavirus lockdown. The Business and Planning Bill as introduced, proposed to make it easier for premises serving food and drink such as bars, restaurants and pubs to seat and serve customers outdoors through temporary changes to planning procedures and alcohol licensing.

2. 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. For the hospitality industry these measures will provide some much-needed flexibility as they reopen fully under social distancing requirements.
3. The Act specifically proposes two temporary strands relating to licensing, a pavement licensing scheme and allowing 'off' sales of alcohol where current permission is restricted to 'on' sales.
4. It also proposes two new temporary planning procedures, allowing applicants to extend the construction working hours (which are often set by condition) and to extend the period for implementation of planning permission (which is normally limited to 3 years by condition).

KEY INFORMATION

Pavement Licensing

5. The Act introduces a new, temporary, fast-track process for businesses serving food and/or drink to obtain a pavement licence, from the Council for the placement of furniture such as tables and chairs on the pavement outside their premises enabling them to maximise their capacity whilst adhering to social distancing guidelines.
6. Surrey County Council, the Highways Authority, currently issue pavement licences for tables and chairs under Part 7A of the Highways Act 1980. The application process includes a 28-day consultation period.
7. The new temporary measure introduces a new 14-day determination period and places a cap on the application fee for businesses of £100, ensuring that businesses can obtain licences in a timely and cost-effective manner aiding their financial recovery.
8. The temporary permissions will last until 30 September 2021. There are enforcement powers contained in the Act to enable the Authority to attach conditions, and revoke licences if the highway is no longer suitable for this use and for breaches of conditions. The proposed conditions to be added to pavement licences are attached at annex 2.

Alcohol Off Sales

9. 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 the end of September 2021.
10. The effect of 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 for example by deliveries or use of pavement licences.

11. 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.
12. The default hours in which off-sales will be permitted will be the same as those in which on sales are permitted with a cut off of 2300hrs in all cases.
13. 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 (noting the 2300 cut off), 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 for example, an existing condition that allowed 'off' sales only in closed containers would be suspended to allow sales in open containers.
14. 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.
15. 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.

Extension of construction working hours

16. The Act introduces a temporary fast track deemed consent route under section 74B of the Town and Country Planning Act 1990. This is to enable urgent changes to construction working hours to support safe construction working in line with the government's latest social distancing guidance on construction and other outdoor work. Accompanying guidance suggests this could be until 9pm or even 24 hours where there are no neighbours locally. However, it is considered unlikely that this would be possible for many sites within the Borough given neighbour constraints which will remain a consideration when assessing requests.
17. The procedure would have the power to vary existing conditions, or the details submitted under a condition, that limit construction site working hours. The Council would have 14 calendar days to consider such applications.

Other regulatory regimes which may affect construction working remain in force, and are not affected by this change.

Extension of planning permissions

18. The Act 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. This is in recognition of the effect coronavirus has had on the planning system and the construction sector and in particular the delays it has caused to the commencement of new development. This extension will allow the commencement of the planning permissions and listed building consents without the need for a new application.
19. 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.
20. 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, subject to Additional Environmental Approval being granted.
21. The Environmental Approval process is newly introduced by the Act and so not covered by the Council's existing Constitution or Scheme of Delegation.
22. The purpose of the Additional Environmental Approval consent route is to ensure that there have not been any changes since the original consideration of Environmental Impact Assessment and Habitats Regulation Assessment which would make that consideration out of date.

OPTIONS

23. No alternative options are available

LEGAL IMPLICATIONS

24. The Act has particular implications for Environmental Health, Planning & Development services. Due to the speed at which the Act is due to be in force and the preparation required by the Council to implement the new procedures, the HOS with the relevant responsibilities have been advised to seek the required authority through the Chief Executive's delegated authority (Constitution, Part 2, Article 4, The Council, paragraph 4.5)
25. Councils need to have the power to both refuse applications where these cannot be managed safely and to act if any issues arise following the re-opening of premises. It is important for councils to be able to retain local oversight and decision making in relation to these new powers.
26. The relevant Council services will determine applications and Legal Services will support the Council with enforcement and Reviews where considered appropriate and/or necessary.

FINANCIAL IMPLICATIONS

27. A fee is charged for pavement licences however this is restricted to a maximum of £100. This is unlikely to allow for full cost recovery (depending on demand) in the coming weeks. The legislation is designed for the least impact on businesses who apply however, MHCLG's new burdens team are looking into this issue to see what costs may need to be considered as part of the new burdens process so a full record of costs will be kept and reported to them as required. There are no additional cost implications for other changes made by the Bill.
28. There may be a small reduction in planning application fee income by the extension to planning permissions which may otherwise have paid a fee to renew. There will be resource implications handling the additional planning requests for which no fee is paid.

EQUALITIES IMPLICATIONS

29. An Equalities Impact Assessment has been carried out and there is no detrimental effect on protected characteristics as a result of the implementation of the Act.

COMMUNICATION IMPLICATIONS

30. There is no communication need at this stage as this report is to ensure the Council is ready for the legislative change. As the legislation is implemented a communications plan will be drawn up to ensure that Councillors, local businesses and residents are kept informed of the temporary changes.

RISK MANAGEMENT CONSIDERATIONS

31. There are no risk management implications

OTHER IMPLICATIONS

- No other implications have been identified

CONSULTATION

32. For this urgent and temporary amendment to the scheme of delegations consultation is with :
- The Mayor
 - The Portfolio holder
 - Section 151 Officer
 - Monitoring Officer/Deputy Monitoring Officer

POLICY FRAMEWORK

33. Not Applicable

BACKGROUND PAPERS

None