

FOR PUBLICATION

COVID-19 - BUSINESS AND PLANNING ACT 2020

MEETING: (1) STANDARDS AND AUDIT COMMITTEE
(2) CABINET MEMBER FOR GOVERNANCE
(3) CABINET

DATE: (1) 2ND JULY 2020
(2) TBC
(3) 14TH JULY 2020

REPORT BY: MONITORING OFFICER
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For publication

1.0 PURPOSE OF REPORT

1.1 To update Cabinet on the new delegations to ensure proper governance as a result of executive functions under new legislation made in response to the current Covid-19 pandemic.

2.0 RECOMMENDATION

2.1 That the new executive function be noted.

3.0 BACKGROUND

3.1 On 19th March the Standards and Audit Committee considered and approved a series of delegations to enable Council decision-making to continue during the national emergency resulting from the Covid-19 pandemic. A further (virtual) meeting of the committee on 5th May enabled the Council to effectively introduce remote meetings. It is intended that a report will be submitted to Standards and Audit Committee on 20th July reviewing these steps.

- 3.2 As the government eases lockdown it introduced the Business and Planning Bill¹ on 25th June, which is rapidly passing through all stages in the House of Commons and House of Lords and is expected to be enacted during the early part of the week commencing 6th July 2020. Most of its main provisions will come into effect immediately and it is important that appropriate governance is in place ready for its implementation.
- 3.3 In brief, the Act will set up a system for licensing use of highway pavements by pubs and cafes, makes changes to alcohol licensing to automatically allow sales off the premises, makes modifications to planning law in relation to applications for changes to working hours on construction projects and extends the duration of planning permission.
- 3.4 The requirement to establish a system for pavement licensing requires systems and delegations to be put into effect rapidly so that appropriate arrangements are in place for applications to be consulted on and decided in the timescales set by law. If the applications are not decided in this timescale deemed consent results. Other provisions in the act are more straightforward to apply.
- 3.5 Since the introduction of the bill officers have been working on appropriate systems to ensure the Council is ready to receive and decide pavement licensing applications as soon as the bill is passed. The period allowed for consultation and decision does not reasonably allow for a committee meeting and therefore officer delegations are needed.
- 3.6 These new powers and duties would operate alongside existing powers, such as the Town Centre PSPO, and control of litter.
- 3.6 The Chairs of Planning and Licensing Committees were consulted on the new delegations and neither had any comments on the proposals.

4.0 PAVEMENT LICENCES – OUTDOOR SEATING

- 4.1 The legislation establishes a licensing system where a local authority grants or is deemed to have granted a licence which allows a licence holder to place removable furniture on highways adjacent to their premises. It only relates to highways under the Highways Act 1980.

¹ <https://publications.parliament.uk/pa/bills/lbill/58-01/119/5801119.pdf>

The licences can be in place for up to a year but not beyond September 2021.

- 4.2 The measures are to help cafes, restaurants, pubs and bars operate safely while social distancing measures remain in place, and help protect the hospitality industry and its income. The licence authorises counters, seating, umbrellas, barriers etc. It does not relate to alcohol licensing – which continues to be regulated under the Licensing Act – and amounts to deemed planning permission for the use of the pavement.
- 4.3 While there is already a way to seek a pavement licence under the Highways Act this is rarely used (about 20 across Derbyshire issued by the County Council as highway authority). The new system gives district councils the function and the process is cheaper and quicker. The fee is capped at a maximum of £100 and the Council will need to set a fee. There is a consultation period of 5 working days on applications. It is envisaged that the county council has designed standard conditions for approved applications for use across the county (eg minimum width of pavement, access for mobility impaired people etc), and there may be others this authority decides to develop for specific circumstances locally. The conditions will take account of any equality considerations, such as ease of access and safe routes on pavements. It is proposed that adoption of any conditions and application processes be part of the officer delegation below.
- 4.4 If the local authority does not decide the application 5 working days after the consultation period (excluding public holidays) the application is deemed granted for a year. There is no right of appeal against refusal. It is therefore vital that an effective and timely determination process is put in place. A system of monitoring and enforcement also needs to be in place, ultimately with a revocation sanction.
- 4.5 **It was proposed and agreed by the Standards and Audit Committee on 2 July, 2020 that all aspects of the function relating to pavement licensing under Part 1 of the Business and Planning Act is delegated to the Assistant Director for Health and Wellbeing in consultation with the Chair of Licensing Committee and appropriate Cabinet Member(s) as necessary.**

5.0 LICENSED PREMISED OFF-SALES

- 5.1 The Business and Planning Act also contains provisions relating to automatic authorization of off-sales for licensed premises, with facility for review. These provisions are incorporated into the Licensing Act and are proposed to be dealt with in accordance with existing Council licensing arrangements.
- 5.2 The measures included in this Bill modify provisions in the Licensing Act 2003 to provide automatic extensions to the terms of on-sales alcohol licences to allow for off-sales. It will be a temporary measure intended to boost the economy, with provisions lasting until the end of September 2021.
- 5.3 The provisions remove the need for any application to be made, therefore no fee will need to be paid. The default hours in which off-sales will be permitted will be the same as those in which on sales are permitted. Any licensee who wished to open for longer hours could apply for a licence variation. In practice, most licensed premises in the borough are already licensed for off sales.
- 5.4 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.
- 5.5 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.
- 5.6 No new delegations are proposed as the new provisions are applied by the legislation automatically and reviews would be covered by the existing delegation in Part 3 of the Constitution.

6.0 CONSTRUCTION WORKING HOURS

- 6.1 The Business and Planning Act also allows for applications to be made for extension of construction hours for non-residential development. The applications must, among other information, propose a date from which the change would take place (not less than 14 days after the application date) and a date when it would end (not later than 1st April 2021) and the proposed modified working. This allows local planning authorities to approve construction to be carried out for longer periods than currently authorized and/or on days when it is not currently authorized.
- 6.2 The procedure cannot be used by a local planning authority to restrict construction hours to less than currently authorized. The procedure includes some measures whereby non determination will result in deemed approval. There is also a right of appeal.
- 6.3 The short period in which the application is to be decided means that it is not practicable to take such matters to Planning Committee and an officer delegation is proposed.
- 6.4 **It was proposed and agreed by the Standards and Audit Committee on 2 July, 2020 that all functions relating to construction working hours inserted in the Town and County Planning Act 1990 (as amended) by Part 3 of the Business and Planning Act 2020 be delegated to the Development Management and Conservation Manager (or in their absence, by the Assistant Director - Economic Growth or by the Principal Planner) in consultation with the Chair of Planning Committee and appropriate Cabinet Member(s) as necessary..**

7.0 TEMPORARY STRUCTURES

- 7.1 The government is also planning to increase the length of time that structures can be placed on land without planning permission from 14 to 28 days for holding a market and from 28 to 56 days for any other purpose in a bid to make it easier to host markets, stalls, marquees, car boot sales and summer fayres. These measures are intended to apply for the current calendar year only.
- 7.2 These changes just extend the existing permitted development freedoms and there is no application or license process and therefore there is no requirement to change the scheme of delegation.

8.0 RECOMMENDATION

10.1 That the new executive function be noted.

10.0 REASON FOR RECOMMENDATION

10.1 To put in place appropriate delegations to enable the provisions of the Business and Planning Act 2020 (which contains measures as the result of Covid-19) to be put into effect.

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