

Report to Licensing Committee

Date of meeting: 13th October 2021



**Epping Forest
District Council**

Subject: Pavement Licensing

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Committee Secretary: Adrian Hendry, 01992 564246

Recommendations:

For information and to note the extension of temporary measures.

Background

1. The Business and Planning Act 2020 (the Act) received Royal assent on 22nd July 2020. The Act introduced a range of temporary measures intended to support businesses and the economy to recover from the severe disruption caused by Covid 19. Among those measures was the introduction of pavement licensing, a simplified and fast track route for pubs, restaurants and cafes to obtain a temporary permission to place furniture including outdoor tables and seating on the highway, allowing them to increase their outdoor capacity safely, quickly and at a low cost.
2. Due to Covid-19 many premises remained closed for extended periods due to lockdown, as they began to re-open, social distancing guidance significantly impacted on how businesses could trade and the number of patrons that could be accommodated safely. The new pavement licence process was part of a package designed to make it easier for businesses to make use of outdoor space for dining and the consumption of alcohol, whilst proving a safer and increased capacity to accommodate customers.
3. Previously, pavement licences were granted primarily under the Highways Act 1980. The fee for the process varied between local authorities, and there was a minimum 28 calendar day consultation period. However, this local authority have not applied these powers to date, The proposal for adoption of pavement licensing was considered by the Licensing Committee and decided against in April 2013, principally because the resource implications for the Licensing Team meant that the administration of pavement licensing would need to be on a full cost recovery basis, which was considered would be detrimental to the hospitality businesses.
4. The Business and Planning Act 2020, delegated new powers directly to local authorities, providing a cheaper, easier and quicker way for businesses to obtain a licence by setting a maximum fee at £100 and reducing the public consultation period to 5 working days. Where a decision is not given within a 14-day period, the licence is automatically deemed granted (tacit consent). This Council has administered these powers and has issued pavement licenses under this legislation since July 2020.
5. The provisions of the Act also temporarily modified the Licensing Act 2003 to provide an automatic extension to the terms of most premises licences, to allow the sale of alcohol for consumption off the premises. This was intended to make it easier for businesses without previous off-sale permission, to sell alcohol to customers using outside areas without the need to apply to vary their existing permission.

6. The new off-sale permission allowed sales during the time the licensed premises are open for the sale of alcohol for consumption on the premises but subject to a cut off time of 11pm or the closure time of an outside area, whichever is earlier. Measures also suspended existing conditions in so far as they are inconsistent with the new off-sale permission. For example, any condition preventing the sale of alcohol in an open container.
7. The overarching principles of the Act are that Licensing Authorities should, wherever possible, seek to encourage and permit these temporary measures and in doing so adopt a pragmatic approach to support the hospitality trade and the economic recovery of our high streets. However, it also recognised the need to achieve a balance between the rights of business to trade and support the local economy and the rights of residents and others not to be adversely impacted by that activity.
8. To achieve this balance, the Act provides, that if there are problems of crime and disorder, public nuisance, public safety or the protection of children from harm arising from a premises 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 under the Licensing Act 2003. However, in the event that an off-sales review is triggered, it will only relate to off-sales authorised by the temporary provisions, or associated conditions. It cannot be used as a mechanism to revoke the existing premises licence or modify pre-existing licence conditions.
9. On 22 February 2021 the Prime Minister published a roadmap for easing the lockdown restrictions. Under in step two, on 12th April, hospitality venues would be allowed to serve people outdoors. Step 3 followed on 17th May, allowing indoor hospitality to re-open however, this was subject to restrictions including the requirement for customers to remain seated while ordering and consuming food and drink.
10. On 4th June the remaining restrictions, including those relating to social contact were lifted. However, in recognition of the ongoing disruption caused by Covid 19, Government announced its intention to extend the temporary measures introduced under The Business and Planning Act 2020 and in doing so, pavement licensing and the new off-sales permission has been extended until 30th September 2022.
11. Whilst the temporary measures have been extended, existing licences still expire on 30th September 2021 however, businesses wishing to extend the permission for a further period, can do so by applying for a new licence. Government has again requested local authorities to do everything possible to support businesses to reopen safely and prosper again.
12. During the period 2020-2021 Epping Forest District Council had issued 18 pavement licences. However, it should be noted that this figure is not a true reflection of the al fresco offer available, as many premises already benefitted from the use of external areas by way of a private forecourt, beer garden or historic tables and chairs tolerated on the highway where no pavement licensing process formally existed. During this period no reports of any adverse impact or complaints from residents or responsible authorities have been received.
13. The Council has taken a proactive approach and has written to all existing licence holders to encourage them to take advantage of the extended period. In addition, the Councils website has also been updated to reflect the changes. To simplify the process, where no change to the existing arrangement is being sought, applicants are requested to notify us in writing and to place a notice at the premises to which it relates. Where however, a variation is being sought, a full application including a revised plan of the outside area is required.

14. To date 17 extended licences have been granted and 1 remains due to expire on 30th September 2021. As before, where the applicant is a small independent operator, no fee is charged however, where the application is on behalf of a large hospitality operator the maximum fee of £100 applies. The total revenue generated under this function so far is £900.00

15. Finally, whilst pavement licensing has been extended until 2022, Government has indicated that it would like to see these regulations continue beyond this date. The Local Government Association (LGA) undertook consultation with Local Authorities during the summer and has recommended that Government does not extend the regulations further, due to operational and cost implications. They have however, suggested a reformed system that blends the best aspects of both the old and new framework. Officers will keep abreast of any developments with a view to making further recommendations regarding the regulation of pavement licensing going forward.