

# ***Supplementary Committee Agenda***



**Epping Forest  
District Council**

---

## ***Cabinet Monday, 20th July, 2020***

**Place:** Virtual Meeting on Zoom

**Time:** 7.00 pm

**Democratic Services:** A. Hendry (Democratic Services)  
Tel: (01992) 564246 Email:  
democraticservices@eppingforestdc.gov.uk

---

### **14.a Business and Planning Bill, Grant of Pavement Licences (Pages 3 - 20)**

To consider the attached report (C-016-2020/21).

This page is intentionally left blank

## **Report to the Cabinet**

**Report reference:** C-016-2020/21

**Date of meeting:** 20 July 2020



**Epping Forest  
District Council**

**Portfolio:** Commercial and Regulatory Services

**Subject:** Business and Planning Bill grant of Pavement Licences

**Responsible Officer:** Qasim (Kim) Durrani (01992 564055).

**Democratic Services:** Adrian Hendry (01992 564246).

---

### **Recommendations:**

(1) To note that the Business and Planning Bill is at Committee Stage in the House of Lords and is likely to get Royal Assent this month and that the Council should have a process in place to determine licensing applications made under the Act;

(2) That in order to achieve the tight timelines for determination of Licence Applications under the new Act agree:

(a) To amend the Scheme of Delegation and add decision making authority to the role of Director of Contract and Technical Service / Director of Commercial and Regulatory Services in respect of applications that do not receive any objections and those that do receive objections the Portfolio Holder for Commercial and Regulatory Services or the Leader of the Council be consulted as well as the Chair or Vice Chair of the Licensing Committee before a decision can be made,

(b) That Consultations on licence applications be carried out by electronic and digital means only,

(c) That Licence fee will be to be set out in Resource Implication section of the report,

(d) That the licence period shall be the maximum permissible under the Act currently likely to be up to September 2021,

(e) That Licensing Conditions attached at appendix-1 are adopted

### **Executive Summary:**

The Parliament is considering fast-track process for Business and Planning Bill that is currently at second reading stage in the House of Lords. The reason for this is to ensure the Bill achieves Royal Assent before Parliaments summer recess.

The Bill is intended to assist businesses in recovery from impacts of Covid-19. Measures include ability for bars, pubs and restaurants that have on site alcohol licences to be able to sell off site and allow these premises the flexibility to seek licences for outdoor seating.

Other measures include road hauliers and other passenger and public service vehicles that are dependent on heavy vehicles testing get certificates of exemptions for public services and goods from Driver Vehicle Standard Agency (DVSA). The Bill introduce new route for developers to seek to amend planning restrictions on construction site working hours to temporarily allow extended working hours and extend expiration of certain planning permissions and listed building consents.

This report seeks approval from Cabinet for necessary consents, approvals, pavement licensing conditions, delegated authority and processes for dealing with objections for applications made under the Act for placing tables and chairs outdoors.

### **Reasons for Proposed Decision:**

To be able to receive, consider and determine applications from premises serving food and drink such as bars, restaurants and pubs to seat and serve customers outdoors through temporary licensing.

### **Other Options for Action:**

If the Council does not have a process in place to determine applications from premises within the 7-day period stipulated in the new Act then the licence will be automatically deemed to be granted. This is not tenable as the Council would want to be in a position to review and assess applications and if deemed inappropriate refuse Licence.

Consideration was given to requiring the applicants to provide CCTV systems for the external areas however it was felt that it is not reasonable. This is because of the legislative requirements would be too onerous especially given the licences are temporary.

### **Report:**

1. The Secretary of State for Business, Energy and Industrial Strategy Alok Sharman introduced the Business and Planning Bill in The Houses of Commons last month. The Bill includes a range of measures to help businesses to adjust to new ways of working as the country recovers from disruption caused by Covid-19. The measures support the transition from crisis response and lockdown to recovery and getting economy moving. It is intended that the measures support businesses to implement safer ways of working to manage the ongoing risks from Covid-19, make high streets safe by facilitating social distancing to encourage foot fall onto high streets.

2. The Bill has four main areas: amendments to the Consumer Credit Act 1974 for lending under Bounce Back Loans, making it easier for certain premises to seat and serve customers outdoors through changes to licensing Act 2003, temporary changes to planning laws to enable the planning system to continue to operate effectively and to support safe construction following Covid-19 and changes to Heavy Goods Vehicles and Public Service Vehicle licensing to prevent backlog of checks for the Driver and Vehicle Standards Agency.

3. This report deals with the outdoor seating element of the new legislation. At the time of writing of this report the Bill had reached the Committee Stage at the House of Lords for consideration at week beginning 13 July. It is expected that Bill will receive, at the earliest Royal Assent by 21 July 2021. This report seeks approval for the necessary arrangements that need to be made for the Council to be able to deal with licence applications in a timely manner.

4. The proposed Bill is likely to amend the Licensing Act 2003 to allow licence for certain businesses to place tables and chairs on the pavement. It is understood that the

amendments will include maximum 7-day determination period following a 7-day consultation period for any applications in this category. This is significantly less compared to the normal 28-day consultation period followed by 21 days for a Licensing Committee hearing. One of the consequences of this will be the lack of time to consult with the Licensing Committee. It is therefore recommended that the Council's Scheme of Delegation be amended to authorise the Service Director to determine those licensing applications where there are no valid objections, discounting vexatious objections. In the event of valid objections the Service Director is to consult with the Portfolio Holder for determination.

5. Due to the short time for determination and consultation it is recommended that all consultations will be electronic and for this Council this will include publishing all applications on the website, email notification to the Clerks to the Town and Parish Council, Ward Members and other representatives such as Highways, Police, Environmental Officers, Fire Service etc. For this reason, Cabinet are asked to reconsider the proposal for consultations by letter, and agree that, for this temporary period only, and only for pavement licences, letters to all residents within 150m radius of a premises subject to application will not be required.

6. It is recommended that the term of the pavement licenses issued by the Council be as proposed in the Act, up to September 2021. The advantages of having one licence period extending to September 2021 means that the administrative burden on the Licensing team is reduced, the licence fee is more fairly applied over the whole period, particularly as some businesses will be reliant on highway alterations to allow widened footpaths before they will be in a position to apply for the pavement licence. The earliest a pavement licence is likely to be effective is early August 2020, which only leaves a couple of effective 'summer months'; and in any case, the licence period can be reduced to less than September 2021 for particular premises, at the councils discretion.

7. Cabinet is asked to agree approval of standard licence conditions as at Appendix -1 that will be applicable to all businesses operating with the benefit of a Pavement Licence. Additional premises specific conditions will also be applicable, which will include, for example days and hours that the pavement licence is valid and plan and layout of the licensable area.

### **Resource Implications:**

It is the intention of Government to minimise any financial implications for the local authorities from outdoor seating licence applications. It is for this purpose that Government has taken away much of the administrative costs such as producing and placing site notice, consulting for 28 days while securing various consents.

The new Act allows local authorities to make a charge for the pavement licence. It is recommended that the following charges be agreed:

Independent Cafes, restaurants and pubs: Free  
Franchised and chain businesses: £100  
Any business operating after 20:00: £100

### **Legal and Governance Implications:**

Should issues arise as a result of a pavement licence being issued, officers will have powers to serve an enforcement notice requiring change to operations, works etc, or the Council can

use their powers of revocation to revoke or vary the licence as appropriate.

### **Safer, Cleaner and Greener Implications:**

The Business and Planning Act 2020 will also introduce modifications to the Licensing Act 2003 that allows for the authorisation of off sales for a limited period. Subject to some restrictions, all on sales only premises licences will have 'off sales' added. This will be for a temporary period lasting until 30 September 2021. No application is required, it is an automatic process provided that an on-sales premises licence was in place on the day the Act comes into force and that there has been no 'disqualifying event' in the previous 3 years (e.g. a refusal to grant an off sales; refusal to vary an off sales, removal of off sales by variation or modification). It is understood that all offences under the Licensing Act 2003 remain in place; off sales do not extend the licenced area, they simply allow off sales.

The Council has new state of the art CCTV in Epping High Street, 31 cams from the Civic down to Tesco's, 31 cams on Loughton High Road, 64 Cameras in Debden Broadway and Lower Queens Rd/Queens Road.

### **Consultation Undertaken:**

Chairman and Vice Chairman of the Licensing Committee have been consulted.

### **Background Papers:**

None

### **Risk Management:**

If the Council does not have a process in place for dealing with applications made under the changes proposed in the Business and Planning Bill these applications will be deemed to be granted automatically. This runs the risks of licensees placing chairs and tables outside premises even when it is not safe to do so. This could result in higher risks to customers and members of the public if social distancing parameters are breached.

There could be a reputational risk to the Council if it is not ready to put systems in place to deal with the new legislation.

### **Equality Analysis:**

The Equality Act 2010 requires that the Public Sector Equality Duty is actively applied in decision-making. This means that the equality information provided to accompany this report is essential reading for all members involved in the consideration of this report. The equality information is provided at Appendix-2 to the report.

## Appendix 2. Equality Impact Assessment

1. Under s.149 of the Equality Act 2010, when making decisions, Epping District Council must have regard to the Public Sector Equality Duty, ie have due regard to:
  - eliminating unlawful discrimination, harassment and victimisation, and other conduct prohibited by the Act,
  - advancing equality of opportunity between people who share a protected characteristic and those who do not,
  - fostering good relations between people who share a protected characteristic and those who do not, including tackling prejudice and promoting understanding.
2. The characteristics protected by the Equality Act are:
  - age
  - disability
  - gender
  - gender reassignment
  - marriage/civil partnership
  - pregnancy/maternity
  - race
  - religion/belief
  - sexual orientation.
3. In addition to the above protected characteristics you should consider the cross-cutting elements of the proposed policy, namely the social, economic and environmental impact (including rurality) as part of this assessment. These cross-cutting elements are not a characteristic protected by law but are regarded as good practice to include.
4. The Equality Impact Assessment (EqIA) document should be used as a tool to test and analyse the nature and impact of either what we do or are planning to do in the future. It can be used flexibly for reviewing existing arrangements but in particular should enable identification where further consultation, engagement and data is required.
5. Use the questions in this document to record your findings. This should include the nature and extent of the impact on those likely to be affected by the proposed policy or change.
6. Where this EqIA relates to a continuing project, it must be reviewed and updated at each stage of the decision.
7. All **Cabinet, Council, and Portfolio Holder reports must be accompanied by an EqIA**. An EqIA should also be completed/reviewed at key stages of projects.
8. To assist you in completing this report, please ensure you read the guidance notes in the Equality Analysis Toolkit and refer to the following Factsheets:
  - Factsheet 1: Equality Profile of the Epping Forest District
  - Factsheet 2: Sources of information about equality protected characteristics
  - Factsheet 3: Glossary of equality related terms
  - Factsheet 4: Common misunderstandings about the Equality Duty
  - Factsheet 5: Frequently asked questions
  - Factsheet 6: Reporting equality analysis to a committee or other decision making body

## Section 1: Identifying details

Your function, service area and team: Commercial and Regulatory Service

If you are submitting this EqlA on behalf of another function, service area or team, specify the originating function, service area or team: No

Title of policy or decision: Development of Licensing arrangements for Pavement Licence applications

Officer completing the EqlA: Tel: 4055 Email: qdurrani@eppingforestdc.gov.uk

Date of completing the assessment: 12/07/2020

## Section 2: Policy to be analysed

2.1	<p>Is this a new policy (or decision) or a change to an existing policy, practice or project?</p> <p><i>New Policy</i></p>
2.2	<p>Describe the main aims, objectives and purpose of the policy (or decision):</p> <p><i>To agree a process for getting approval for licensing applications made by businesses for placing chairs and tables outside cafes, bars and restaurant etc.</i></p> <p>What outcome(s) are you hoping to achieve (ie decommissioning or commissioning a service)?</p> <p><i>Have agreed Licence Conditions, a Scheme of Delegation and consultation process that would allow the Council to deal with such applications.</i></p> <p><i>This is a temporary arrangement for a period ending 30 September 2021, to help businesses in the recovery phase of the covid-19 emergency to extend their business footprint on to the highway, whilst maintaining social distancing to protect both staff and customers</i></p>
2.3	<p>Does or will the policy or decision affect:</p> <ul style="list-style-type: none"><li>• service users – <i>yes Local Businesses</i></li><li>• employees – <i>yes EFDC Licensing Team staff, business staff who operate in applicant premises</i></li><li>• the wider community or groups of people, particularly where there are areas of known inequalities? The pavement licence conditions required as part of the licence are in place to protect public safety generally and against public nuisance, for example, potential noise nuisance to residents because of business operations. They support the Councils Safer Spaces project to restore the confidence of customers to return to the high streets and use the bars, restaurants and pubs again, following the covid-19 outbreak</li></ul> <p>Will the policy or decision influence how organisations operate?</p> <p><i>No</i></p>

2.4	Will the policy or decision involve substantial changes in resources? <i>No</i>
2.5	Is this policy or decision associated with any of the Council's other policies and how, if applicable, does the proposed policy support corporate outcomes? <i>No</i>

### Section 3: Evidence/data about the user population and consultation<sup>1</sup>

As a minimum you must consider what is known about the population likely to be affected which will support your understanding of the impact of the policy, eg service uptake/usage, customer satisfaction surveys, staffing data, performance data, research information (national, regional and local data sources).

3.1	<p>What does the information tell you about those groups identified?</p> <p><i>Grant of properly considered applications under the new proposed Bill will allow placing of tables and chairs in a safe manner, both for the users of the premises as well as others using the public space. The proposed arrangements will make use of these spaces safer, increase customer confidence and that in turn may help with increasing foot fall to high streets and boost economic vitality of our high streets.</i></p>
3.2	<p>Have you consulted or involved those groups that are likely to be affected by the policy or decision you want to implement? If so, what were their views and how have their views influenced your decision?</p> <p><i>Due to time limitations it has not been possible to carry out a wider consultation. The Chairman and Vice Chairman as well as those Members of the Licensing Committee who could be contacted at short notice have been consulted.</i></p>
3.3	<p>If you have not consulted or engaged with communities that are likely to be affected by the policy or decision, give details about when you intend to carry out consultation or provide reasons for why you feel this is not necessary:</p> <p>N/A</p>

## Section 4: Impact of policy or decision

Use this section to assess any potential impact on equality groups based on what you now know.

Description of impact	Nature of impact Positive, neutral, adverse (explain why)	Extent of impact Low, medium, high (use L, M or H)
Age	Neutral This service is for local businesses and will operate under a Licensing Policy that aims to make the high streets safer for all users. Provision of tables and chairs may have a positive impact on the elderly if they wish to benefit from sitting outside.	L
Disability	Neutral This service is for local businesses and will operate under a Licensing Policy that aims to make the high streets safer for all users. Provision of tables and chairs, with adequate spaces for enabling Social Distancing, could have a positive impact on this group. Specific conditions are included within the licence conditions to ensure that disabled people are not disadvantaged in using the premises subject to the pavement licence, either inside or outside the premises, or on the adjacent highway	L
Gender	Neutral This service will operate on the same policy and guidelines for customers of all gender	L
Gender reassignment	Neutral This service will operate on the same policy and guidelines for customers of all gender	L
Marriage/civil partnership	Neutral	L

	This service will operate on the same policy and guidelines for all customers	
Pregnancy/maternity	<p>Neutral</p> <p>This service is for local businesses and will operate under a Licensing Policy that aims to make the high streets safer for all users. Provision of tables and chairs, with adequate spaces for enabling Social Distancing, could have a positive impact on this group</p>	L
Race	<p>Neutral</p> <p>This service will operate on the same policy and guidelines for all customers</p>	L
Religion/belief	<p>Neutral</p> <p>This service is for local businesses and will operate under a Licensing Policy that aims to make the high streets safer for all users. Provision of tables and chairs, with adequate spaces for enabling Social Distancing, could have a positive impact on this group by enabling celebration of religious events in the public space.</p>	L
Sexual orientation	<p>Neutral</p> <p>This service will operate on the same policy and guidelines for all customers</p>	L

## Section 5: Conclusion

		Tick Yes/No as appropriate	
5.1	Does the EqlA in Section 4 indicate that the policy or decision would have a medium or high adverse impact on one or more equality groups?	No	
			If ' <b>YES</b> ', use the action plan at <b>Section 6</b> to describe the adverse impacts and what mitigating actions you could put in place.

## Section 6: Action plan to address and monitor adverse impacts

What are the potential adverse impacts?	What are the mitigating actions?	Date they will be achieved.

**Section 7: Sign off**

**I confirm that this initial analysis has been completed appropriately.  
(A typed signature is sufficient.)**

Signature of Head of Service:

Date:

Signature of person completing the EqIA:

Date:

**Advice**

Keep your director informed of all equality & diversity issues. We recommend that you forward a copy of every EqIA you undertake to the director responsible for the service area. Retain a copy of this EqIA for your records. If this EqIA relates to a continuing project, ensure this document is kept under review and updated, eg after a consultation has been undertaken.

This page is intentionally left blank

## **Pavement Licence Conditions: Business and Planning Act 2020**

Please note this licence can be revoked if there is failure to comply with these conditions.

1. The licence holder must conform with latest Government guidance on social distancing and hygiene measures to ensure the licensed area is covid- safe for staff and customers, as far as reasonably practical.
2. The licence holder(s) shall at all times comply with all statutes, statutory instruments, regulations and by-laws. Particular attention should be paid to the requirements of the Health and Safety at Work Act 1974, the Food Safety Act 1990, The Food Hygiene (England) Regulations 2013 and associated European Regulations, particularly, but not exclusively EC Reg 852/2004, The Coronavirus Act 2020 and related Regulations; and the Business and Planning Act 2020.
3. The licence holder must ensure that business operations from the licenced area align with existing local business arrangements and charters, including regular markets and street trading consents
4. Except with the previous written consent of the Council, only the amenities detailed on the licence are to be placed on the public highway, in accordance with the plan layout, and the amenities are only to be placed on the public highway between the times detailed on the licence and on the permitted area specified in the licence
5. The Council may require the boundary of the permitted area to be defined by a fixed barrier system, that is suitably stable so as not to be easily blown or knocked over. Any proposed facility used to define the licenced area, for example fencing, rope stands, planters will require approval by the Council as part of the application
6. Clear routes of access along the highway must be maintained, taking into account the needs of disabled people. A width of 2m should be maintained but where this is not possible, 1.5m will be the minimum width allowed. Clear access to the entrance of the adjoining premises must always be maintained, including access for disabled people.
7. The licence holder is not permitted to make any fixtures, or excavations of any kind, to the surface of the highway without prior written approval of the Responsible Highway Authority (Essex County Council).
8. The licence holder is not permitted to erect the amenities other than in accordance with the provisions of the licence.
9. The licence holder(s) shall not cause any nuisance or annoyance to any other user of the highway, or any adjacent land or premises. The licence holder is responsible for keeping good order including the control of all litter and rubbish within the boundary of the permitted area.
10. Any music, emanating from the premises and licenced area shall not be audible at the boundary of nearest noise sensitive area so as to cause a public nuisance.
11. All furniture, including tables, chairs and barriers used on the licensed area must be portable and must be removed at the end of the trading period for the pavement area, as specified on the licence, to either inside the premises or within its own premises boundary and off the highway. Any amenities left outside must be secured fixed and locked to the building to prevent removal.
12. Otherwise than stated on the specific premises licence, the following time restrictions apply:
  - (a) Pavement furniture will not be put out on the licensable area before 8am on any day

- (b) The licensable area must be cleared of furniture and customers by no later than 21:00 Sunday to Thursday and 22:00 Friday and Saturday
13. The tables & chairs and other furniture shall be kept in a clean, safe and well-maintained, to the satisfaction of the Council.
  14. The licenced area is to be used for seated customers only so that social distancing of customers can be managed
  15. Where the consumption of alcohol is to take place then only plastic or toughened glass and bottles are to be permitted within the licenced area.
  16. Where heating is proposed for colder weather, electric heating is preferred to LPG, to minimise the carbon usage. Fire pits are prohibited. Alternative options of temporary screens (subject to Council approval) and rugs, cushions and blankets can also be considered as climate friendly solution
  17. All outside electrical heating must be suitable for the use intended and installed and located to eliminate any risk posed by power supply cables, including tripping hazards. All electrical equipment must be subject to regular visual inspection and must be safe, maintained free from 'danger' and not pose a risk. Where necessary, electrical equipment must receive an appropriate safety examination, to ensure that it remains safe, maintained free from 'danger' and not pose a risk.
  18. All full and nominally empty gas cylinders for patio heaters or other liquid gas fired appliances, must be stored outside either in a secure cage or suitably secure location, bear the correct signage and located away from drains and gullies (min 2M). The maximum number of cylinders onsite (full and nominally empty) shall not exceed a volume of 100Kg. All gas cylinders must meet latest BS EN requirements.
  19. The licenced area and pavements and road surfaces immediately adjacent, must be kept free of litter, detritus and rubbish, including staining of the highway surface from food and drink spillages.
  20. Litter and rubbish associated with the business must be removed from pedestrian walkways as required, to maintain a clean, litter free area, for a distance of up to 5 metres from the boundary of the permitted area.
  21. Litter and Trade Waste arising from the activities shall be removed from the licensed area daily and disposed of in an approved manner.
  22. No water, rubbish or waste material associated with the business shall be discharged or deposited on the highway or onto any adjacent property or into any surface water inspection chamber or gully or other watercourse
  23. At the instruction of the Council, the licence holder must remove the Street Furniture during the permit period for the purpose of:
    - (a) Works in or under or over the highway or for using it in connection with works in, under or over land adjacent to or adjoining it as may be required by Epping Forest District Council, the local highways authority or any statutory undertaker or other person authorised by the Council.
    - (b) Use by emergency services.
    - (c) Any other reasonable cause.
  24. All amenities must be immediately removed at the end of the licence period or if the licence is revoked.

25. In the event of a breach of the licence, the highway must be reinstated to original condition. The licence holder will be required to reimburse the Council, if, as a result of a breach of the licence conditions, it is required to carry out any reinstatement works.
26. The licence holder shall not make any claim against the Council in the event of any property of the licence holders becoming lost or damaged in any way from whatever cause.
27. The licence holder must indemnify and keep indemnified the Council from and against all actions, costs, claims, proceedings, demands and liability, which may at any time arise or be incurred in consequence of the placing and maintaining the amenities on the highway or their removal from the highway.
28. The licence holder must hold a Public Liability Insurance indemnity policy throughout the term of the licence up to the value of £5 million against any liability, loss or damage, claim of proceeding whatsoever arising under Statute or Common Law in respect of the placing and maintaining the Street Furniture on the highway or their removal. The applicant is required to submit proof of this insurance prior to the licence being issued and on the anniversary of the issuing of the policy as long as the licence is in operation.
29. This licence shall not be assigned to any other person, firm or organisation.
30. The licence holder shall make available these general conditions to every person engaged in supplying food and drink to customers on the premises subject to this licence.
31. Failure to comply with these conditions may lead to revocation of the licence and or prosecution of the licence holder.

**Note: Permission to place tables and chairs on the highway does not exempt the applicant from complying with any other legislation applying to the premises.**

**A separate set of conditions will apply to a licence for the erection and use of advertising boards and awnings or canopies fitted to the premises.**

#### **Diagrammatic examples of suitable LPG storage**



This page is intentionally left blank