



Report of the Cabinet Member for Delivery & Operations

Cabinet – 20 January 2022

Future Strategy for Outside Hospitality

Purpose:	This report advises as to actions taken during the pandemic to support the hospitality trade and proposed future policies and procedures.
Policy Framework:	Asset Management Plan 2021-2025
Consultation:	Access to Services, Finance, Legal.
Recommendation(s):	It is recommended that Cabinet approves to: 1) Extend the concession in respect of Pavement Licences and Highways Licences until 31 st March 2023. 2) Review those agreements and Licences which have extended into the carriageway and extend as appropriate within existing delegated authority. 3) Receive and consider a further review of licensed, non-highway land by mid-2022.
Report Author:	Geoff Bacon
Finance Officer:	Ben Smith
Legal Officer:	Debbie Smith
Access to Services Officer:	Rhian Millar

1. Background

- 1.1 As a result of the pandemic, there was an immediate and urgent demand from local businesses for a relaxation of established mechanisms for permitting outdoor trading, whether it be the usage of tables and chairs on land adjacent to premises or the reaction to pent up demand for new mobile trading facilities.
- 1.2 The Council responded to the challenge of speeding up existing processes but not to detriment of all stakeholders.

- 1.3 The four key areas below were tackled with concentration of effort on assistance for existing businesses and for that reason were considered the priority. However the success of outdoor trading continues to be evident and this has led to the identification of additional, short term locations.
- Seating pavement licences
 - Seating Council land, non-highway
 - Seating Non-council, non-highway
 - Mobile Street trading
- 1.4 There were a number of immediate actions taken throughout the pandemic and this strategy is intended to build on the lessons learnt.

These were primarily:-

- There is a market for outdoor hospitality
- A careful balance is required to ensure stakeholders are engaged
- Reaction to market demand has to be within statutory requirements
- The evident demand indicates that a return to charging a market rate would be appropriate

2. Key Areas

2.1 Seating Pavement Licences

The existing scheme in operation covers issues governed by the Highways Act allowing the provision of facilities on the Highway for consumption of food and/or beverages on the footway. Primary concern from a Highways perspective remains the safe and accessible route of pedestrians and the understanding that carriageway occupations are temporary whilst businesses are being supported during the pandemic. . During the pandemic the process was accelerated with waivers for new sites and renewals. . There continues to be the opportunity for the development of larger areas used in a communal way by businesses for outdoor seating/dining and this was developed in a number of non-highway locations. Officers continue to work with business to support proposals for these type of arrangements, but it is for the collective businesses to come forward and manage the areas created and ensure social distancing, cleaning and acceptable behaviour is in order.

Issues have arisen where operators have exceeded the authorised licenced area, failed to renew licences, have sought to occupy beyond the established 11pm, which is beyond the cut off when it comes to permitted development rights (10pm) and have been reluctant to remove furniture. Going forward it must be ensured that furniture is removable without special equipment or knowledge and will be taken in a minimum of monthly, or at immediate request, to enable inspection, cleaning and to carry out maintenance. Along with the need to render the furniture unusable by patrons after the permitted time has expired each day. A

termination date for the use of carriageways for licences will need to be agreed as the temporary measures are not suitable on a permanent basis.

This has become a major point of contention with traders in that the request for more permanent, fixed arrangements with installed power are not acceptable on the public highway. There remain a number of complainants/objectors to the temporary arrangements primarily around accessibility and potential issues for those with mobility issues and those trying to navigate the areas if they are pushing prams. There is concern that the flexibility to enable these licenses as a result of uncertainty during the pandemic have extended beyond what was originally envisaged. However, it is proposed that these temporary arrangements remain in place until 31st March 2023. During the pandemic, arrangements to allow licenced seating have required temporary/experimental traffic regulation orders in some cases. These may require approval from Welsh Government to extend, each site will be checked to confirm and if any issues arise they will be reported. Subject to these checks, they will remain “free” however all licensees will be advised of the level of the concession granted and that the full fee will be reinstated as at 1st April 2023.

Charging rates will continue to be constantly reviewed and compared to national rates.

There are currently 9 seating areas which have extended into the carriageway. These are currently being reviewed on the basis if they can continue to be justified on highway safety grounds that consideration is given to making these into permanent footways. It is proposed that all carriageway occupations will stop on the 31st of March either through works to create new footway or termination of licence. Any works will have to be at the full cost of the applicant as due to the commercial benefit attributable it could not be considered acceptable for this to be done at cost to the Council.

These areas will need to be reviewed as a matter of urgency as they’ve been in place for some time, beyond what could be considered appropriate. Consultation will be undertaken with planning and ward members. Full consultation and individual IIA’s may be required in some cases.

2.2 Seating Council Land, Non-Highway

Where there is a request to use an area of land adjacent or at least close to an existing business, this, in theory can be relatively easy to accommodate. If there are no adjacent “competing” businesses then under the Land Transaction Rules agreement can be reached. Normally there would consultation with Planning and Licensing and Ward members. This would continue but would be fast tracked. If there were objections this would need to be escalated. If there were potentially competing interests they would be “encouraged” to work together.

Any agreement would have to pass on responsibility to any applicant and the Council would have to insist all appropriate documentation- insurance, risk assessments, procedures- were in place.

A number of locations, notably Southend Gardens and Singleton Park have been managed successfully by Special Events due to their specific locations. They have offered an enhancement to the tourism offer and management by the local businesses has led to few issues or disruptions. However during the pandemic no licence fees or costs were charged.

As with the pavement licenses the temporary nature of the arrangements – removable furniture etc. removes the requirement for planning consent.

Going forward these areas, including outdoor markets, such as those which occupy areas in the Uplands, Mumbles and the Marina will be reviewed to establish appropriate fees and costs will be charged to reflect the commercial value. This review will also consider how best to ensure equity with established, permanent local traders and will be concluded mid-2022.

2.3 Seating Non-Council Land, Non-Highway

If it's established that the land in question is not owned by the Council nor is it Highways i.e. some areas of SA1, then only the statutory regulations of Licensing and Planning would need to be complied with.

2.4 Mobile Street Trading

During the pandemic when an application was submitted all consultees were requested to respond sooner than normal to allow applications to be processed quicker. We will endeavour to continue to push for early responses however reasonable period for responses should be expected.

The Council receives a lot of interest in street trading and there are currently 70 street traders in total. Officers are working on potential opportunities particularly around the sea front with 1 new site to the prom in Mumbles and another 4 pitches which have just been filled through the sell2wales site. It is considered that the additional sites identified have now put those locations at capacity. More substantial temporary sites are being considered as a result of the success of the mobile venues and the financial return on investment in these sites is considered justifiable

Any businesses that approach the Council regarding a street trading consent continue to be dealt with as quickly and appropriately as possible.

2.5 Licensing

As temporary restrictions guidance implemented during the pandemic limiting the inside use of hospitality premises have been removed, there remain a number of options available to licence holders to make sure that their particular business can operate effectively and comply with legislative requirements. Licensing officers and the relevant responsible authorities

will remain available to help applicants and licence holders and advise on any individual issues or concerns about an application.

2.6. Planning

As with licensing, temporary permitted development rights that were introduced by Welsh Government to support re-opening of business and to create safe environments for the public are no longer valid from 3rd Jan 2022. Welsh Government has confirmed that these PD rights will not be extended. Businesses who wish to continue operating in line with these temporary permitted development rights would therefore need to apply for planning permission if they wish to continue operating after 3rd January 2022.

Where the use continues after this date without appropriate planning permission, the Local Planning Authority would need to consider whether enforcement action is necessary to control the use or require it to cease. Each case would need to be considered on its merits, and key issues are likely to be the impact on residential amenity and highway safety.

Planning enforcement is discretionary and should only be taken where it is expedient to do so. Action would not be taken solely to remedy a breach where no harm is occurring. Formal enforcement action would be a last resort. However, it is likely that at the very least, planning conditions would be required to control the use in the long term. The absence of a planning application would prevent the LPA from using conditions to control the use and as a result, enforcement action would be required.

For those areas which are currently operating under licence on Council land but with the benefit of permitted development rights, operators will be advised that they must engage with the LPA to determine an appropriate course of action.

The Welsh Government is currently consulting on whether these temporary permitted development rights should be re-introduced as permanent permitted development rights in the future.

3. Financial Implications

- 3.1 On the basis that a continuation of a concession up until the 31st March 2023, the expected loss of income for Pavement Licenses is in the region of £50,000pa. Subject to the approval of this report, this income will be replaced from the ERF for 22/23.

4. Legal Implications

HIGHWAYS

- 4.1 Street cafes are considered to be tables and chairs placed on the highway where food and drink is served to customers. The Council must ensure that the public's rights to use the highway is not detrimentally affected.

- 4.2 Permissions to use the highway for street cafés are granted by the issue of licences by the Council as the Highway Authority under Part VIIA (Provision of Amenities on Certain Highways), Section 115A-115K of the Highways Act 1980.
- 4.3 Section 115E of the Highways Act 1980 allows for a council to grant permission to others to use objects or structures on, in or over a highway for the following purposes: (i) for a purpose which will result in the production of income; (ii) for the purpose of providing a centre for advice or information; or (iii) for the purpose of advertising. Section 115F of the Highways Act 1980, provides that a council may grant a permission upon such conditions as they think fit, including conditions requiring the payment to the council of such reasonable charges as they may determine (being such charges as will reimburse the council their reasonable expenses in connection with granting the permission). Section 115K refers to the enforcement of the terms of the conditions: the Council may serve notice requiring the permit holder to take steps to remedy the breach within specified timescales. If this is not complied with, the Council may undertake the steps themselves and recover their costs in so doing.
- 4.4 Before a street café license is granted, a Traffic Regulation Order (TRO) must be implemented with the effect of prohibiting vehicular traffic over the space to be licensed. The TRO may be made under s.1 and s.9 of the Road Traffic Regulation 1984.
- 4.5 The applications for street café licences must be advertised for not less than 28 days by posting notices in the vicinity of the proposed street café. These notices set out details of the proposals and invite representations to be made by people who may be affected. Section 115J states that consent may not be unreasonably withheld but may be given subject to any reasonable conditions. If consent is unreasonably withheld, or is subject to unreasonable conditions, then it can be referred for arbitration.

PLANNING

As detailed in clause 2.6 above.

5. Integrated Assessment Implications

- 5.1 The Council is subject to the Equality Act (Public Sector Equality Duty and the socio-economic duty), the Well-being of Future Generations (Wales) Act 2015 and the Welsh Language (Wales) Measure, and must in the exercise of their functions, have due regard to the need to:
- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Acts.
 - Advance equality of opportunity between people who share a protected characteristic and those who do not.
 - Foster good relations between people who share a protected characteristic and those who do not.
 - Deliver better outcomes for those people who experience socio-economic disadvantage

- Consider opportunities for people to use the Welsh language
- Treat the Welsh language no less favourably than English.
- Ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs.

5.1.1 The Well-being of Future Generations (Wales) Act 2005 mandates that public bodies in Wales must carry out sustainable development. Sustainable development means the process of improving the economic, social, environmental and cultural well-being of Wales by taking action, in accordance with the sustainable development principle, aimed at achieving the 'well-being goals'.

5.1.2 Our Integrated Impact Assessment (IIA) process ensures we have paid due regard to the above. It also takes into account other key issues and priorities, such as poverty and social exclusion, community cohesion, carers, the United Nations Convention on the Rights of the Child (UNCRC) and Welsh language.

5.2 An Integrated Impact Assessment screening form has been completed in relation to the project which is attached at Appendix 1. The screening form has determined that a full IIA is not required. This is a relatively low risk proposal as it will deliver an improvement in service provision that should have a positive impact across the population. There has been an evident demand for increased outdoor hospitality, whilst this was primarily as a result of the restrictions during the pandemic the additional provision has enabled greater choice, and therefore accessibility, for the wider population. The intention is to build on this success whilst ensuring there is appropriate control to protect all stakeholders.

5.3 Finally, the scheme is unlikely to impact on the Council's obligations under the Welsh Language Standard Regulations 2015.

Background Papers: None

Appendices: Appendix 1 – Integrated Impact Assessment