

23 July 2024

Title	Pavement Licence policy
Purpose of the report	To make a decision
Report Author	Lucy Catlyn, Principal Licensing Officer
Ward(s) Affected	All Wards
Exempt	No
Exemption Reason	N/A
Corporate Priority	Environment
Recommendations	<p>Committee is asked to:</p> <ol style="list-style-type: none"> 1. Approve the draft Pavement Licensing Policy for adoption and consultation with the proposed fee. 2. Give approval for minor amendments to the Policy to be approved by Deputy Chief Executive and the Chairman of the Licensing Committee.
Reason for Recommendation	To have a clear policy and standard local conditions for pavement licensing which has been updated in line with legislation. To also review the fee charged.

1. Summary of the report

What is the situation	Why we want to do something
<ul style="list-style-type: none"> • Legislation (Business and Planning Act 2020) has changed on Pavement Licensing. 	<ul style="list-style-type: none"> • Need to update our policy and fees
This is what we want to do about it	These are the next steps
<ul style="list-style-type: none"> • Need to have a clear pavement licensing policy with standard local conditions and fee. 	<ul style="list-style-type: none"> • Committee to approve draft policy for adoption and consultation and proposed fee. Committee to decide if want to prohibit glass.

1.1 This report seeks to obtain authority from the Licensing Committee to approve the draft Pavement Policy for consultation in accordance with the timetable specified in this report.

2. Key issues

2.1 On 25 June 2020, The Government announced relaxations to planning and licensing laws to help the hospitality industry recover from the coronavirus lockdown. The Business and Planning Act 2020 made it easier for premises

servicing food and drink to seat and serve customers outdoors through temporary changes to planning procedures and alcohol licensing.

- 2.2 Initially, the legislation was temporary, with the pavement licensing aspect expiring 30 September 2021. This was then extended several times with the last extension expiry being 30 September 2024.
- 2.3 With Schedule 22 of the Levelling Up and Regeneration Act 2023, the government have permanently moved pavement licensing to the district/ borough level, away from the highways authority and amended the Business and Planning Act 2020 to introduce some changes to processes and introduce enforcement powers.
- 2.4 It is now necessary to update the existing policy to be in line with these amendments and have it adopted by the Licensing Committee.
- 2.5 The draft policy is attached as **Appendix A**. The changes are fully in line with the new legislation and do not propose anything in addition other than an opportunity to tidy up some of the wording throughout.
- 2.6 The amendments include the following:
 - Removal of sections no longer relevant or needed
 - Updating of references to legislation /consultation periods (in line with legislative amendments)
 - Addition on new section on enforcement (directly lifted from the legislation)
 - Tidying up of terminology
- 2.7 The duration of licences has changed from a minimum of three months and up to 30 September each year, to no minimum duration and a maximum of two years.
- 2.8 In addition, new fees should be considered so that local authorities can better recover their costs for administering pavement licensing. Previously, the statutory cap for applications was £100 for the fee set and charged when the legislation came at very short notice in July 2020. The legislation has amended this introducing higher caps for new and renewal applications. The new fee caps set in legislation are £500 for a new application and £350 for a renewal.
- 2.9 A cost calculation exercise has been undertaken and it is proposed to charge the maximum fees of £500 for a new application and £350 for a renewal. The proposed fees have been calculated based upon timings and estimated costs for processing of applications, site assessments, compliance checking after licence is issued, etc. It should be noted that this will not cover the Council's total costs due to the amount of interaction and advice applicants require.
- 2.10 We have consulted with relevant stakeholders and replies are attached at **Appendix B**. It has been suggested by Surrey Police and Business Improvement District (BID) that we should have a no-glassware policy. None of the other Surrey Licensing Authorities have this as a condition. No evidence has been provided to substantiate a need for no glass. Comments

have been provided in the pre consultation with stakeholders about the effects on the climate in having no glass.

3. Options analysis and proposal

Policy Review

- 3.1 **Option 1** - Agree the Policy as proposed and allow minor amendments to be made to the Policy be approved by Deputy Chief Executive and the Chairman of the Licensing Committee, or;
- 3.2 **Option 2** - Agree the Policy as proposed with an amendment added that businesses must not allow glass outside and allow minor amendments to be made to the Policy be approved by Deputy Chief Executive and the Chairman of the Licensing Committee.
- 3.3 The preferred option is for Licensing Committee to approve the draft policy and proposed fees so that it can go out to consultation with relevant stakeholders in accordance with the timetable set out in this report. In addition allow minor amendments to be made to the Policy be approved by Deputy Chief Executive and the Chairman of the Licensing Committee

Fee setting

- 3.4 To agree to the proposed fees of £500 for a new application and £350 for a renewal; or;
- 3.5 To leave fees as they currently are or amend the proposed fees. Both options will mean the Council is not covering the costs of the service.

4. Financial management comments

- 4.1 Should the fees be agreed then the Council will be recovering the maximum permitted in line with legislation. Costs associated with consultation and publication are minimal and will be met from within existing Licensing budgets. To date the Council has received income of: -

2020/21	£800
2021/22	£1200
2022/23	£1800
2023/24	£1300
2024/25 (to 05.07.2024)	£710

5. Risk management comments

- 5.1 Fees may be challenged in the High Court (Judicial Review) or by complaint to the Local Auditor. It is therefore important that the process the Council follows is fair, open, and transparent.

6. Procurement comments

- 6.1 This report refers to a draft policy for which there are no Procurement considerations.

7. Legal comments

- 7.1 Although the Council is not required by law to have a pavement licensing policy in place it is good practice to have such a policy. The policy will assist the Council in making decisions that are transparent and consistent.
- 7.2 When determining pavement licence applications the Council must have regard to Guidance issued by the Secretary of State.
- 7.3 The Guidance states that the expectation is for local authorities to be pragmatic and to grant licences for a maximum period of 2 years unless there are good reasons for granting a licence for a shorter period.
- 7.4 The Council will need to consider several factors when determining whether or not to approve a pavement application, including whether or not conditions are required to approve an application for a licence.
- 7.5 The Council will also need to consider factors including public health and safety including security, public amenity, accessibility, and the needs of other users of the relevant space.
- 7.6 There is no statutory right of appeal in relation to the Council's decision to either approve or reject a pavement licence application. An applicant may apply again for such a licence.
- 7.7 There is a risk that applications are deemed granted if they are not determined within the 28-day period. The Council can minimise this risk by ensuring appropriate resources are in place to handle the volume of applications received within 28 days of receipt.
- 8. Other considerations**
- 8.1 In revising the policy the Council will have a Pavement Policy and cost recovery in the future will be achieved.
- 9. Equality and Diversity**
- 9.1 An Equalities Screening Assessment has been carried out. The revised draft policy does not have any impact on protected characteristics.
- 10. Sustainability/Climate Change Implications**
- 10.1 Should the Committee determine that there should be a no glass policy then this could have a sustainability/climate implication and contradict the Council's commitments to climate change.
- 11. Timetable for implementation.**
- 11.1 The proposed timetable is as follows:
- Report to Licensing Committee on 23 July 2024 to obtain approval to consult on the revised draft policy.
 - Consult with stakeholders between 25 July 2024 and 22 August 2024.
- 11.2 Report to Licensing Committee on 25 September 2024 to seek a recommendation to adopt a final proposed policy.
- 11.3 CPRC to recommend adopting the proposed fees October 2024.
- 12. Contact**

12.1 Lucy Catlyn, Principal Licensing Officer (01784 444295)
l.catlyn@spelthorne.gov.uk or licensing@spelthorne.gov.uk

Background papers:

- Business and Planning Act 2020
- Levelling Up and Regeneration Act 2023

Appendices:

Appendix A: Draft Pavement Licence Policy.
Appendix B: Stakeholder Comments