

29 October 2024

<b>Title</b>	Pavement Licence policy
<b>Purpose of the report</b>	To make a decision
<b>Report Author</b>	Lucy Catlyn, Principal Licensing Officer
<b>Ward(s) Affected</b>	All Wards
<b>Exempt</b>	No
<b>Exemption Reason</b>	N/A
<b>Corporate Priority</b>	Environment
<b>Recommendations</b>	<b>Committee is asked to:</b> 1. Approve the draft Pavement Licensing Policy for adoption
<b>Reason for Recommendation</b>	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"> <li>Legislation (Business and Planning Act 2020) has changed on Pavement Licensing.</li> </ul>	<ul style="list-style-type: none"> <li>Need to update our policy and fees</li> </ul>
This is what we want to do about it	These are the next steps
<ul style="list-style-type: none"> <li>Need to have a clear pavement licensing policy with standard local conditions and fee.</li> </ul>	<ul style="list-style-type: none"> <li>Committee to approve draft policy for adoption.</li> </ul>

1.1 This report seeks to obtain authority from the Licensing Committee to approve the draft Pavement Policy for adoption.

## 2. Key issues

2.1 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.

2.2 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 of the 2020 Pavement Licensing policy.

2.3 When the responsibility for Pavement Licensing was transferred from Surrey County Council to Spelthorne Borough Council, the Government initially made

provision under the Business and Planning Act 2020 for the Council to charge a maximum fee of £100 in order to support businesses during COVID. However, the legislation has been changed and the new fee caps set in legislation are £500 for a new application and £350 for a renewal.

2.4 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.

2.5 A public consultation was undertaken from 25 July 2024 and 22 August 2024. there have been a total of seven replies which are summarised below and attached at **Appendix B:**

- It has been suggested by the Business Improvement District (BID) that we should have a no-glassware policy during evenings and weekends. None of the other Surrey Licensing Authorities have this as a condition. No evidence has been provided to substantiate a need for no glass in Spelthorne. Comments have been provided in the pre consultation with stakeholders about the effects on the climate in having no glass.
- Surrey Highways have asked for 2 additional conditions. In addition they have stated that Public Liability Insurance only lasts 12 months and that we should not issue a licence for longer than this. It is not practicable to only issue for this period of time and legislation is in place for two years.
- Complaint about the fee. There was also a comment on other Council's charging less, however this could be because they are yet to update their policies. It was also suggested it could be charged by turnover. Both comments have not been considered to reduce the fee as the Licensing Authority needs to ensure that the costs are recovered from Pavement Licensing Applications.
- Comments from Counter Terrorism which have been included in the policy.
- Comment that barriers should be in colours which contrast with the ground and with walls or other obstacles. In addition that rope barriers should not be used. The policy has been amended to include this and that rope barriers should not be used where possible.

### **3. Options analysis and proposal**

#### **Policy Review**

3.1 **Option 1** – Adopt the policy and allow minor amendments to be made to the Policy be approved by the Senior Environmental Health Manager and the Chair of the Licensing Committee, or;

3.2 **Option 2** - Adopt 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 as per 3.1.

3.3 The preferred option is for Licensing Committee to adopt the policy and proposed fees. In addition allow minor amendments to the Policy as per 3.1.

#### **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.
- 4.2 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 to approve a pavement application, including whether 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 29 October 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)  
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**Background papers:** None

### **Appendices:**

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

### **Documents referenced in this report**

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