

Report title	Amendment of Pavement Licensing Policy
Report author	Kelly Dutfield, Senior Licensing Officer
Department	Environmental Services
Exempt?	No
Exemption type	Not applicable

Purpose of report:

- **To resolve**

Synopsis of report:

To seek approval to consult on the Council's current Pavement Licensing Policy, as amended in line with legislative changes introduced by the Levelling Up and Regeneration Act 2023.

Recommendation that:

- i) Urgent Action Standing Order 42 proforma 969 be noted**
- ii) Following legislative change, a revised Pavement Licensing Policy is required to be approved;**
- ii) The revised Pavement Licensing Policy be approved for public consultation for a period of 4 weeks; and**
- iii) Approval for adoption of the amended Policy be submitted to the next scheduled meeting of this Committee in September 2024**

1. Context and background of report

- 1.1 The Business and Planning Act 2020 (the 2020 Act) received Royal Assent on 22 July 2020 and introduced a number of measures with the purpose of allowing business sectors to operate whilst managing the risks arising from the COVID-19 pandemic.
- 1.2 This included temporary fast-track provisions to reduce the regulatory barriers for premises such as restaurants and pubs in England to apply for pavement licences to be able to serve customers outdoors.
- 1.3 Previously, tables and chairs permissions were granted as pavement licences by Surrey County Council, the Highways Authority, under Part 7A of the Highways Act 1980. The fee varied between local authorities and included a time consuming 28-day consultation period.

- 1.4 The new temporary measures placed a cap on the application fee for businesses, and introduced a new 7-day determination period, ensuring that businesses could obtain licences in a timely and cost-effective manner aiding their financial recovery.
- 1.5 SO42 969 (Appendix A) was agreed as an urgent action by the former Chair and Vice-Chair of the Regulatory Committee in July 2020, in order to adopt a Policy relating to the granting of pavement licences, and to delegate powers to the Corporate Head of Environmental Services (CHES) to authorise relevant officers to determine, issue and undertake relevant enforcement in respect to pavement licences. As this Policy is due for review, it has transpired that this Standing Order was not noted by the next available meeting of this Committee meeting as per the standard procedure in the Constitution. This report seeks to complete the formal process by asking Members to note the standing order accordingly, revise the Policy, in conjunction with a public consultation and undertake a full review.
- 1.6 The draft amendments to the pavement licensing fees were previously approved and adopted at the meeting of this Committee in November 2023 (see paragraph 4.1).

2. Report and, where applicable, options considered and recommended

- 2.1 On 31 March 2024, the pavement licensing provisions laid out in the Levelling Up and Regeneration Act 2023 (LURA) schedule 22, were commenced, amending the 2020 Act. This was introduced much earlier in the year than anticipated.
- 2.2 The provisions introduce a permanent pavement licensing regime in England to replace the temporary provisions introduced by the Business and Planning Act 2020. A business which uses (or proposes to use) premises for the sale of food or drink for consumption (on or off the premises) can apply for a pavement licence (e.g. public houses, cafes, bars, restaurants, snack bars, coffee shops, ice cream parlours, including supermarkets and entertainment venues which sell food or drink).
- 2.3 A licence permits the business to use temporary furniture placed on the highway to sell or serve food or drink and/or allow it to be used by people for consumption of food or drink supplied from, or in connection with the use of the premises.
- 2.4 This permanent regime retains the key features of the 2020 regime, intended to streamline processing and reduce costs, but also incorporates some changes, to ensure the long-term sustainability of the model, which are summarised as follows;
 1. Amend the fee councils can charge applicants, increasing it from a set £100 to a maximum of £350 for renewals (premises which already hold a pavement licence) and £500 for new applicants (s2(1) of the 2020 Act and new s2(1A) & (10)), the actual fee being determined by the local authority.
 2. Extend both the public consultation period and council determination period from 7 days to 14 calendar days, for each (s2(4) & 3 of the 2020 Act).
 3. Extend the maximum duration of pavement licences from 1 year to 2 years. The length of a licence is however granted at the discretion of the local authority (s4 of the 2020 Act).
 4. Provide that pavement Licences can also be amended by the local authority, with the consent of the licence holder, if it is considered that the conditions on the licence are not being met (new s6(3) inserted in the 2020 Act).

5. Prohibit a local authority from granting a tables and chairs licence under the old regime (Highways Act 1980) if a pavement licence is capable of being granted under this Act (s115E(1) amended and new s115E(5) inserted in the Highways Act 1980).
 6. Insert a new enforcement section providing powers to the local authority to give notice to businesses who have placed furniture on the highway without the required licence, and to remove said furniture if it continues to remain on the highway in contravention of the notice (new s7A inserted in the 2020 Act).
- 2.5 Several minor changes to the statutory “Guidance to accompany pavement licensing” (dated 2 April 2024) have also been made to clarify certain points and make it more comprehensive.
 - 2.6 Existing Licence holders can retain their licences granted under the temporary regime until the expiration date on their licence. There are currently 4 premises in the Borough that hold a pavement licence and all of these are due for renewal on or before 30 September 2024 should they wish to continue providing tables and chairs outside. Three of these are located in Magna Square (Lounge, Starbucks and Everyman Cinema) and one in Addlestone (Greggs on Station Road).
 - 2.7 Once a pavement licence is granted by the local authority, the premises will benefit from deemed planning permission for the furniture for the duration of the pavement licence.
 - 2.8 The Business and Planning Act 2020 continues to allow temporary amendments to the Licensing Act 2003 to provide automatic extensions to the terms of on-sales alcohol licences to allow for off-sales. This is currently in place until 31 March 2025, however a public consultation has been issued by Government to consider three proposals to make this easement permanent by a Legislative Reform Order.
 - 2.9 Runnymede Council’s policy for pavement licensing has been revised to include the amended areas at 1) to 6) above. This is attached at Appendix B.
3. **Policy framework implications**
 - 3.1 Should circumstances dictate that the policy requires updating as we gain experience of pavement licensing, this will be done through the normal Committee process.
4. **Resource implications/Value for Money**
 - 4.1 The cost of a licence has been capped by the legislation at £350 for licence renewals and £500 for new applications. A fee setting exercise has been carried out to determine the cost of issue of the licence and Officers are satisfied that had the Council set the fee it would have surpassed £350 or £500. As such, the fee of £350 for licence renewals and £500 for new applications is justifiable and was approved by this Committee in November 2023.
 - 4.2 There is no indication as to how many businesses will apply for a pavement licence under this new regime. The licensing section will administer, process and determine the applications within current staffing levels.
 5. **Legal implications**

- 5.1 Section 101 of the Local Government Act 1972 provides for various ways for Local Authorities in the Committee System to discharge their functions, including delegation to committees, officers and other organisations. Following the Council Constitution, this is the correct Committee for this matter to be dealt with.
- 5.2 As mentioned earlier in the report, Pavement Licences were introduced during the Covid pandemic as a temporary solution to help relevant businesses, by allowing them to set removable furniture on the pavement adjacent to the premises, where deemed appropriate and with conditions attached. The legislation has been extended on several occasions and Pavement Licences as currently known were due to end on 30th September 2024. The Levelling-up and Regeneration Act 2023 is making the legislation permanent.
- 5.3 As mentioned above, Enforcement Notices can be served where furniture is set on the pavement without authorisation and the Council is now able to recover and dispose of the furniture if not claimed by the licence holder. This does not directly provide for prosecutions. Section 6(1) of the 2020 Act however also provides for the revocation of the Pavement Licence if the Council considers the licence holder has breached any conditions of the licence, which is another useful deterrent.
- 5.4 There is no statutory appeal process for refusal of a pavement licence, but Judicial Review of the decision will always be open to the unsuccessful applicant. To protect the Council against such reviews, decisions will be fully reasoned and documented.

6. Equality implications

- 6.1 Prior to the adoption of the initial Pavement Licensing Policy, an equality screening assessment was referred to the Equality Group on 14 July 2020, and their comments were incorporated. The Equality Group confirmed that a full equality impact assessment was not required. Having reviewed the assessment, Officers do not consider that there are any significant changes in the legislation that require it to be reviewed at this time.
- 6.2 The Licensing Service has due regard to the public sector equality duty under the Equalities Act 2010, including the need to eliminate unlawful discrimination. Any businesses which apply for a pavement licence will also need to have regard to their duties under the Equality Act 2010, such as their duty not to discriminate both when employing staff and in providing their services, and their duty to make reasonable adjustments.
- 6.3 The Act sets out a national “no-obstruction” condition which applies to pavement licences which are granted or deemed to be granted, requiring licence holders to allow for access on the pavement for wheelchair users and others. The statutory guidance outlines how the local authority and applicant can consider the needs of disabled people when considering whether the requirements of the no-obstruction condition are met.

7. Environmental/Sustainability/Biodiversity implications

- 7.1 There are some environmental implications to issuing a pavement licence, namely potential public nuisance from the generation of litter, food debris and noise. However, the Act does allow for conditioning of licences and the policy contains Standard Licence Conditions, including the following that seeks to address public nuisance;

- *All detritus (food and drink remnants, spillages, bottles, cans, wrappers etc) shall be regularly removed from the footway surface to reduce hazards to pedestrians. The licence holder must make arrangements to regularly check for and to remove litter and rubbish on pedestrian walkways, caused by persons using the facility, for a distance of up to 10 metres from the boundary of the facility. The licence holder must ensure that any tables are cleared in an efficient manner during the hours of operation. The licence holder must ensure the licensed area and surrounding highway is to be washed down at the completion of each day's usage using a method sufficient to remove food debris, grease and other spillages that may occur.*

8. Risk Implications

Not applicable

9. Other implications

Not applicable

10. Timetable for Implementation

- 10.1 The Proposed sequence for the introduction of the revised Pavement Licensing Policy is;

Step 1 – Whilst there is no statutory consultation period, consult all interested parties between 25 June – 23 July 2024 (4 weeks) e.g. Local Ward Councillors, Highways Authority, Surrey Police, Surrey Fire and Rescue Service, RBC Assets, RBC Town Centre Manager, Chamber of Commerce, existing Licence holders;

Step 2 – Results of the consultation be brought back to this Committee for further discussion in September 2024;

Step 3 – Policy is adopted and comes into effect 24th September 2024.

11. Conclusions

- 11.1 The revised Pavement Licensing Policy sets out the changes within the Levelling Up and Regeneration Act 2023, which introduce a permanent pavement licensing regime. This continues to streamline the processing of applications for businesses, but also ensures the long-term sustainability of the model.

12. Background papers

- Business and Planning Act 2020
<https://www.legislation.gov.uk/ukpga/2020/16/contents/2024-03-31>
- Levelling Up and Regeneration Act 2023
<https://www.legislation.gov.uk/ukpga/2023/55/contents/enacted>
- Guidance to accompany pavement licensing introduced in the Business and Planning Act 2020 (dated 2 April 2024)
<https://www.gov.uk/government/publications/pavement-licences-guidance>

13. Appendices

- Appendix A: Urgent Action Standing Order 42 969
- Appendix B: Runnymede Council Pavement Licensing Policy (revised)