

PAVEMENT LICENCE POLICY

Head of Service:	Rod Brown, Head of Housing & Community,
Wards affected:	(All Wards);
Urgent Decision?(yes/no)	Yes
If yes, reason urgent decision required:	Legislation is in effect
Appendices (attached):	1: Draft Pavement Licensing Policy

Summary

The report outlines the proposed Council policy for implementing pavement licences following the enactment of the Business and Planning Act 2020.

Recommendation (s)

The Committee is asked to:

- (1) To approve the Pavement Licence Policy as set out in Appendix 1 and delegate to the Head of Housing and Community any minor amendments to the Policy, in consultation with the Chairman of Licencing & Planning Policy Committee;**
- (2) Set a fee of £100 for per pavement licence application;**
- (3) Delegate to the Head of Housing and Community the determination and enforcement of Pavement Licences made under the Business and Planning Act 2020.**

1 Reason for Recommendation

- 1.1 Following the enactment of the Business and Planning Act 2020, the Council will be required to determine applications for pavement licences. The Business and Planning Act 2020 received Royal Assent on 22nd July 2020.
- 1.2 The recommendation seeks Committee's approval of the Pavement Licencing Policy to ensure the Council is able to set out how it intends to determine applications. This includes the imposing of standard Council conditions. The Council also need to set a fee and delegate authority for the determination and enforcement of licence applications.

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2 Background

- 2.1 On 25 June, the Government announced proposals to relax planning and licensing laws to help the hospitality industry recover from the coronavirus lockdown.
- 2.2 The Business and Planning Act 2020 introduces a new “fast track” time limited pavement licence scheme, which will be the responsibility of the Local Authority to administer. The licence will enable premises to place furniture outside their premises to maximise their capacity whilst adhering to social distancing guidelines. It also introduces changes to alcohol licensing, to allow off premises sales without the need for an application or an additional licence being issued, including the delivery of alcohol.
- 2.3 Currently, tables and chairs permissions are granted as Pavement licences by Surrey County Council, in their capacity as the Highways Authority, under Part 7A of the Highways Act 1980. The fee varies between local authorities and there is a time consuming 28 day consultation period ahead of any decision to grant permission.
- 2.4 The provisions on pavement licences have come into force.

3 Business and Planning Act 2020

- 3.1 The Business and Planning Act includes temporary measures to support businesses selling food and drink through economic recovery, as lockdown restrictions are lifted but social distancing guidelines remain in place.
- 3.2 The Act and the accompanying guidance details the process for applications including the applicable fee, which can be any value up to a maximum of £100. The determination period is limited to 14 days which includes a 7 day consultation period.
- 3.3 Any application has to be applied for electronically and there are prescribed formats for the relevant notices that are to be used by the local authority. The Council is able to impose only those conditions which it has published before an application for a licence is made. Hence the importance of having a policy in place in readiness for the Act coming into force.
- 3.4 If the local authority do not determine the application with 14 days of it being made the licence will be deemed to have been granted subject to the applied activity meeting any national conditions including avoidance of obstruction and smoke free seating provision.

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- 3.5 The period for which a licence can be granted cannot be shorter than 3 months or exceed 30th September 2021. There is an expectation from central government that unless there are reasonable grounds most licences will be granted for a period of at least 12 months.
- 3.6 The local authority can attach conditions to a licence it grants and these will include national conditions as well as local conditions which must be set out in the authority's relevant policy.

4 Proposals

- 4.1 The Council's draft Pavement Licence Policy, is attached as Appendix 1 to this report and sets out how the Council proposes to manage the applications for Pavement Licences.
- 4.2 The Policy includes the imposition of standard conditions to any licence. The need to publish standard conditions is to ensure that all licences granted are to be undertaken with clear guidelines of operation around access and obstruction, prevention of nuisance, public safety, use of furniture and times of use. This will also ensure that where licences are 'deemed granted' they will be granted for 12 months subject to the standard conditions published by the Council. This is particularly important given the short timescales allowed under the Act for the Council to determine an application.
- 4.3 The policy includes a proposed application fee charged for each application of £100 and a list of consultees for each application.
- 4.4 As with some other statutory licensing regimes such as Licensing Act 2003, this charge would not cover the cost of administering or enforcing the pavement licence regime. More it is a nominal fee, with the aim to make it easier and cheaper for businesses to apply to use the pavement as part of their everyday activities whilst social distancing measures are in place.
- 4.5 Applications will be administered by the Council's Licensing Service, and where an application is for the Market Place, consultation with the Head of Operations will take place. The temporary permission granted through a pavement licence will not impact the current Highways Licensing undertaken in the Market Place for those premises which already benefit from consents under other legislation.
- 4.6 It is not possible at this stage to identify how many applications are likely to be submitted, but the geographical layout in many parts of the borough provides limited pavement space.
- 4.7 The Act provides enforcement provisions which will enable additional conditions to be imposed following any representations received, additionally, a licence may be revoked if appropriate.

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- 4.8 If a condition imposed on a licence is breached the Council will be able to issue a notice requiring the breach to be remedied and the authority can take action to cover any costs. The Licence can also be revoked.
- 4.9 There is no statutory appeals process for Pavement Licences under the Business and Planning Act 2020. In light of the very short time period for determination, it would be impractical to implement any internal appeal process. Instead the decision making process will contain the necessary safeguards to ensure robust and safe decision making.

5 Risk Assessment

Legal or other duties

5.1 Impact Assessment

5.1.1 There are no impact assessment implications for this report. The legislation has considered equality issues and has imposed a national condition to ensure access.

5.1.2 The second national condition relates to smoking.

5.2 Crime & Disorder

5.2.1 The application of relevant local Pavement Licence conditions, the power to evoke licences and the existing controls available through the current licencing legislation will enable crime and disorder issues to be managed.

5.2.2 The nature of the pavement licence is to enable activities that often take place indoors to occur outside of premises on the highway. Therefore it is expected that there is likely to be issues with neighbouring properties being affected by an increase in noise and other disturbances from the activities within the footprint of the licence, which in turn could be exacerbated by the cumulative effect of the number of pavement licences operating in any one area at any one time.

5.2.2 The standard conditions proposed to be added to all granted licences include conditions to address public nuisance.

5.3 Safeguarding

5.3.1 None.

5.4 Dependencies

5.4.1 None.

5.5 Other

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5.5.1 None.

6 Financial Implications

6.1 The scheme would be administered using existing financial resources within the Licensing Service. It is envisaged income arising from the modest application fee will cover the costs of administering the licences.

6.2 **Section 151 Officer's comments:** None for the purposes of this report.

7 Legal Implications

7.1 The Business and Planning Act has been introduced as a range of measures to support the recovery process. The two key changes to licensing regimes is to:

7.1.1 Create a new temporary 'pavement licence' to be issued by district councils authorities controlling the use of the public highway by pubs, cafes, bars, and restaurants and

7.1.2 Allowing any premises holding a licence authorising on-sales of alcohol to be able to authorise off-sales.

7.2 The introduction of a temporary pavement licences process, has been designed to introduce a streamlined consent route to allow businesses to obtain a licence to place temporary furniture, such as tables and chairs outside of cafes, bars and restaurants quickly. The licence fee is fixed at no more than £100. Licences can remain in place for one year but not beyond 30 September 2021.

7.3 A pavement licence will authorised the licence holder to put removable furniture on part of the public highway for one of two reasons:

7.3.1 for the licence holder to sell or serve food or drink from their premises

7.3.2 for customers to consume food or drink from the licence holder's premises

7.4 It is important for the Council to have in place an operational process for the determination of application for such licences in light of the deemed consent provisions. The Council will need to have in place a standard electronic application form, run a public consultation exercise, make determinations and adopt standard conditions and have in place schemes of delegation to make decisions on the issue and enforcement of pavement licences.

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- 7.5 There are standard conditions of no obstruction and smoke free seating and these can be supplemented by the Secretary of State. These extra conditions relate to smoke free seating and to clear routes of access. This later condition is important as it addresses the needs of those with disabilities.
- 7.6 Any breach of a licence can be enforced with remediation notice and or revocation of the licence.
- 7.7 **Monitoring Officer's comments:** None arising from the contents of this report.

8 Policies, Plans & Partnerships

- 8.1 **Council's Key Priorities:** The following Key Priorities are engaged: The following Key Priorities are engaged: Opportunity and prosperity – supporting the local economy during Covid19.
- 8.2 **Service Plans:** The matter is not included within the original Service Delivery Plan for this year but does reflect a key priority emerging from the pandemic which is actively supporting the local economic recovery.
- 8.3 **Climate & Environmental Impact of recommendations:** None.
- 8.4 **Sustainability Policy & Community Safety Implications:** The use of local conditions will enable effect management of any implications on community safety.
- 8.5 **Partnerships:** The determination of applications requires consultation with a range of partners, listed in the draft policy attached as Appendix 1.

9 Background papers

- 9.1 The documents referred to in compiling this report are as follows:

Previous reports:

- None

Other papers:

- Guidance: pavement licences (outdoor seating proposal)

<https://www.gov.uk/government/publications/pavement-licences-draft-guidance/draft-guidance-pavement-licences-outdoor-seating-proposal#national-conditions>