

PAVEMENT LICENCE FEES AND POLICY

Head of Service:	Rod Brown, Head of Housing & Community
Report Author	Paul Holliday
Wards affected:	(All Wards);
Urgent Decision? (yes/no)	No
If yes, reason urgent decision required:	
Appendices (attached):	Appendix 1 Current Pavement Licence Policy Appendix 2 Updated Pavement Licence Policy

Summary

The temporary provisions of the Business and Planning Act 2020, which allowed the licence holder to place removable furniture over certain highways adjacent to the premises, have been made permanent by the Levelling Up and Regeneration Act 2023. The 2023 Act also introduced a standard fee cap for both new and renewals of licences as well as increased consultation and determination periods, lengthens the maximum duration of licences and provides local authorities with new powers to remove unlicensed furniture. As a result of these changes, it is necessary for the Council to review the application fee and policy in relation to pavement licences.

Recommendation (s)

The Committee is asked to:

(1) Set the fee for pavement licences as follows; -

New applications £500

Renewal of licence £350

And either

(2) (a) Dispense with the Epsom & Ewell Pavement Licence Policy

or

(b) Update the Pavement Licence Policy as shown in Appendix 2

Environment Committee

16 July 2024

1 Reason for Recommendation

- 1.1 Normally the Council sets licence fees to ensure full cost recovery, so that the financial burden of the processing and administration of a licence is passed onto the direct beneficiary of the licence, rather than to residents of the Borough through increased taxes. The Business and Planning Act 2020 set the fee for pavement licences at a maximum of £100, which did not allow Licensing Authorities to fully recover their costs. The Levelling Up and Regeneration Act 2023 has now increased the fee cap for pavement licences. By setting the Council's fees as recommended the Licensing Authority will be able to maximise cost recovery.
- 1.2 As a result of the changes brought about by the Levelling Up and Regeneration Act 2023, the Government has provided new and improved guidance for pavement licensing on the .GOV website. This guidance makes most of Epsom & Ewell Borough Council's Pavement Licence policy either out of date or unnecessary, and as a result it is recommended that the pavement licence policy is dispensed with, rather than updated to copy the .GOV guidance. Officers would continue to determine applications under delegated authority, with the Council's website linking to the .GOV guidance.

2 Background

- 2.1 The Business and Planning Act 2020 introduced a range of measures intended to support the economy recover from the disruption caused by the COVID-19 outbreak in the UK. These measures included a pavement licence, authorising the operator of a business selling food and drink to put furniture such as tables and chairs on the highway adjacent to its premises to sell food and drink from and/or for its customers to use.
- 2.2 The streamlined application process for pavement licensing was initially a temporary pandemic measure, before being extended each year until eventually being made permanent by the Levelling Up and Regeneration Act 2023 in April.
- 2.3 The Levelling Up and Regeneration Act also introduced a standard fee cap for both new and renewals of licences as well as increased consultation and determination periods, lengthened the maximum duration of licences up to a maximum of two years, and provides local authorities with new powers to remove unlicensed furniture.
- 2.4 Since the implementation of Business and Planning Act 2020 five hospitality businesses in Epsom and Ewell Borough have benefitted from pavement licences. In most cases the applications attracted some minimal representation, resulting in a reduction in the number of tables and chairs authorised from the numbers requested.

Environment Committee

16 July 2024

- 2.5 Only one complaint has been received because of a licence being granted. This was a consequence of the licence holder exceeding the authorisation granted, resulting in the alleged obstruction of the pavement. The owner of the premises was spoken to about what they were authorised to provide on the pavement, however the business permanently closed before any follow up action was required.

Application fee

- 2.6 The Business and Planning Act 2020 provided that local authority may require an application fee of up to £100. The processing and determination of applications by local authorities requires considerable work to be undertaken at a rapid pace, and it is unlikely that any local authority would ever be able to recover their costs because of the fee cap. Consequently Epsom & Ewell Borough Council set the pavement licence fee at £100.
- 2.7 The Levelling Up and Regeneration Act 2023 replaces the £100 maximum fee for an annual licence with a cap of £350 for renewal of licence and a maximum of £500 for new applications, whilst extending the licence period up to a maximum of two years. Extending the maximum licence term reduces the administrative burden on both Licensing Authority and the licence holder, whilst the increased fee cap allows for increased cost recovery for the Licensing Authority
- 2.8 Licensing officers have estimated the average officer time taken to process a pavement licence application, and administer the licence once granted. Based on these estimates in order to fully recover costs we would need to charge £555 for a new application, and £425 for a renewal application.
- 2.9 As it is estimated costs will exceed the fee level capped by Government, it is recommended the licence fees should be set at the maximum permitted amount to maximise cost recovery.

Policy

- 2.10 At the time the provisions of The Business and Planning Act 2020 came into effect, in the absence of comprehensive guidance from the government on the new regime, many Licensing Authorities developed pavement licence policies to provide guidance to applicants on how to apply and what would normally be authorised. A copy of Epsom & Ewell Borough Council's Pavement Licence policy, initially approved by the Licensing and Planning Policy Committee 6 August 2020, is attached as Appendix 1.

Environment Committee

16 July 2024

- 2.11 With the commencement of the Levelling Up and Regeneration Act 2023 the Government has updated and improved the guidance published on the .GOV website, to the point now where Epsom & Ewell Borough Council's Pavement Licence policy is now almost entirely redundant. The information that remains relevant (e.g., who will be consulted, expectations of a 10pm finish times for licence, the information to be provided by the applicant, the standard local conditions) could instead be set out in the application form and guidance on the Council's website, along with a link clearly signposting the comprehensive .GOV website guidance.
- 2.12 Application for Pavement Licences are already delegated to Officers, with no statutory appeal process against a decision. There is also no statutory requirement for a Pavement Licence policy. The proposal to dispense with the Pavement Licence Policy and replace it with published procedures for the grant and determination of applications would be consistent with the 'light touch' nature of the legislation.
- 2.13 If the policy remains it will need periodic review, requiring approval by Committee, to reflect any changes to the legislation or guidance. This would involve some additional financial burden to the Council in terms of Officer and Member time, which could not be recovered through the licence fee due to the fee cap.
- 2.14 It is recommended that the current pavement licence policy be dispensed with, replaced by clear guidance on the licensing procedure on the Council's website. Many other areas of licensing (e.g., scrap metal dealers, street trading, the registration of skin piercing and tattooists, animal welfare) do not currently have a licensing policy requiring scrutiny by a Committee, and it is considered that in light of the revised guidance issued by the Government the current Pavement Licence Policy is no longer necessary for effective service delivery.
- 2.15 If the Committee is minded to retain the Pavement Licence Policy, then it is recommended it is updates to reflect the changes brought about by the The Levelling Up and Regeneration Act 2023, and the Committee approve the update Policy attached at Appendix 2.

3 Risk Assessment

Legal or other duties

3.1 Equality Impact Assessment

- 3.1.1 The updated guidance published by the Government on the .GOV website clearly sets out 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.

Environment Committee

16 July 2024

3.1.2 In following this guidance the Council will be able to evidence compliance with the duties on local authorities by section 149 of the Equality Act 2010 to have due regard to: the need to eliminate unlawful discrimination, advance equality of opportunity between people who share a protected characteristic and those who do not and foster or encourage good relations between people who share a protected characteristic and those who don't.

3.2 Crime & Disorder

3.2.1 The police are consulted on all pavement licence applications, and any concerns relating to crime and disorder are considered before the licence is determined.

3.2.2 The licensing authority may revoke a licence, or amend it with the consent of the licence holder, if the use is causing, or risks causing, anti-social behaviour or public nuisance.

3.2.3 It is considered that the consultation process and the option to revoke permits should problems arise adequately address the relatively low risks around the licensing of tables and chairs on the pavement.

4 Financial Implications

4.1 As detailed in paragraph 2.8, the cost of officer time to process a pavement licence application, and administer the licence once granted is estimated at £555 for a new application, and £425 for a renewal application. By charging the maximum allowable licence fee, the Council is minimising the burden on Council Taxpayers of delivering this service.

4.2 Dispensing with the Council Pavement Licensing Policy will save officer time, that would otherwise be required to undertake periodic reviews, which represents a small time saving for the team.

4.3 There are currently 5 premises with a pavement licence in the Borough. It is estimated that approximately 3 new licences and 8 renewals may be received on average each year, resulting in annual income of £4300 to help cover the team's costs.

4.4 **Section 151 Officer's comments:** The financial implications are contained within the body of the report.

5 Legal Implications

5.1 Legal Officer's comments: This report provides the Committee with an update changing the temporary Pavement Licensing regime that has been in place since 2020 with that of the permanent Pavement Licence which commenced on the 31 March 2024.

Environment Committee

16 July 2024

6 Policies, Plans & Partnerships

6.1 **Council's Key Priorities:** The following Key Priorities are engaged:

- Effective Council – reviewing the fee charged for a pavement licence will help ensure effective cost recovery, minimising the financial burden on the residents of the Borough. Dispensing with a Pavement Licence Policy will reduce the administrative burden on officers and members by removing the requirement for routine scrutiny of the policy when, for example, Government guidance on pavement licensing is amended.

6.2 **Service Plans:** The matter is not included within the current Service Delivery Plan.

6.3 **Climate & Environmental Impact of recommendations:** The proposed changes do not have a Climate & Environmental impact, with no changes being proposed to the existing process for determining pavement licence applications.

6.4 **Sustainability Policy & Community Safety Implications:** The proposed changes do not have any Sustainability Policy & Community Safety implications, with no changes being proposed to the existing process for determining pavement licence applications.

6.5 **Partnerships:** The proposed changes do not have any implications for working with partners, with the Council continuing to consult with the Surrey Highways Authority, Surrey Police and Surrey Fire & Rescue Service and Swail House.

7 Background papers

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

Previous reports:

- [Special meeting, Licensing and Planning Policy Committee - Thursday, 6th August, 2020 7.30 pm](#)

Other papers:

- [Government Guidance on Pavement Licences, Published 2 April 2024](#)