

Licensing Committee Meeting	
Meeting Date	24 th June 2024
Report Title	Amendments to the Swale BC Pavement Licence policy 2023 - 2026
EMT Lead	Emma Wiggins, Director of Regeneration and Neighbourhoods
Head of Service	Charlotte Hudson, Head of Housing and Community Services
Lead Officer	Christina Hills, Licensing Team Leader
Classification	Open
Recommendations	<ol style="list-style-type: none"> 1. That Members consider the proposed draft revision of the Swale BC Pavement Licence policy 2023-2026 made in response to recent changes in legislation and approve adoption of the policy. 2. That Members approve the proposed fees as set out in the report. 3. That Members recommend to Policy and Resources Committee that the policy be approved and published

1 Purpose of Report and Executive Summary

- 1.1 To present Members with a draft revision of the current Swale Pavement Licence Policy which has been amended in line with changes to the current legislation brought about by the commencement of Schedule 22 of the Levelling Up and Regeneration Act 2023.
- 1.2 Members are requested to consider and approve the fee levels for new and renewal applications for the grant of licences.

2 Background

- 2.1 In response to the Coronavirus pandemic, the Government introduced the Business and Planning Act 2020. This included a temporary provision for a quicker and cheaper or “fast track” process to allow businesses selling food or drink to obtain authorisation from a local authority to place furniture such as tables and chairs on the highway adjacent to their premises known as a Pavement Licence.
- 2.2 This temporary provision was originally due to expire on 30th September 2021, but this has been extended in subsequent years, the last extension being laid before parliament and adopted on 17th July 2023 so that fast track Pavement Licence provisions will continue to apply until 30th September 2024. There are currently 18 granted licences.

- 2.3 At the Licensing Committee meeting of 19th October 2023, Members approved the current Swale BC Pavement Licensing Policy 2023 – 2026
<https://services.swale.gov.uk/meetings/documents/s26849/Pavement%20Licence%20Policy.pdf>
- 2.4 There is no statutory requirement for a local authority to have a formal Pavement Licence policy; however, a Council can choose to adopt a policy. As stated, this is for the benefit of business owners as well as reassuring the general public. It also reinforces the Regulators Code when dealing with applications by promoting effective practice and ensuring that all decisions as to whether to grant an application or not are proportionate, consistent and transparent.
- 2.5 The Levelling Up and Regeneration Act 2023 has now come into effect and the relevant section regarding pavement licences came into force with the Levelling Up and Regeneration Act 2023 (Commencement No. 3 and Transitional and Savings Provision) Regulations 2024/389 from 31st March 2024. This made a number of changes and as a result it has been necessary to review the current policy and make amendments to it to reflect these changes. The draft policy is shown as **Appendix I**. A table showing the amended wording is shown as **Appendix II**.

3 Proposals

- 3.1 The changes brought about by the Levelling Up and Regeneration Act 2023 are to:
- Amend the fee councils can charge applicants, increasing it from £100 to £350 for premises which already hold a pavement licence, and £500 for new applicants.
 - Extend the public consultation period and council determination period from 7 days to 14 days.
 - Extend the maximum duration of pavement licences from 1 year to 2 years. The length of a licence is however at the discretion of the local authority.
 - 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.
 - Prohibit a local authority from granting a tables and chairs licence under the old regime (Highways Act 1980) if a pavement permit is capable of being granted under this legislation.
 - Insert a new Enforcement schedule providing powers to the local authority to remove furniture if a premise is not abiding by its pavement licence conditions and hours.

4 Alternative Options Considered and Rejected

- 4.1 As the amendments to the policy are a statutory requirement, if a local authority has a policy for pavement licensing, then the current legislation must be reflected in it.

- 4.2 Members could decide that pavement licences will be issued for a lesser period than 2 years, but this involves extra work for the licensing team and unnecessary bureaucracy and financial burden for applicants and existing licensees and is therefore not recommended.
- 4.2 With regards to the setting of fees, Members could decide to set fees lower than the suggested maximum however the preferred option is to approve the fees at the maximum level i.e., £500 for a new application and £350 for a renewal application.
- 4.3 The rationale for this is two-fold: - firstly because the current fee of £100 barely covers the assessment and processing of an application. Secondly, to date, the Government have paid a 'burdens payment' of £5,000 annually to administer the temporary process. However, it is believed that now that the licensing regime has been made permanent and local authorities can levy higher fees which will be more reflective of the actual costs involved with the pavement licence process, the burdens payment will cease although it has not been possible to confirm this.
- 4.4 Members will also be mindful that licence fees should be set so as to be 'cost neutral' and not to make a profit. Therefore, if Members are minded to approve the recommendation that fees are set at the maximum permitted, it would be the intention to review them in 12 months' time when a full assessment of the impact of the new requirements and the cost to the Council could be made.

5 Consultation Undertaken or Proposed

- 5.1 As the amendments to the policy are in line with the new legislation it is not considered necessary that a consultation exercise is needed.

6 Implications

Issue	Implications
Corporate Plan	<p>The service is an important regulatory function undertaken to ensure the safety of the public consumers</p> <p>Community – Indirect links to:</p> <p>To work as part of the Community Safety Partnership to delivery priorities to address domestic abuse, crime, and disorder, ASB and support vulnerable people.</p>
Financial, Resource and Property	<p>The amendments to the Business and Planning Act 2020 application fees for Pavement Licences cap licence fees at a maximum of £500 for a new application and £350 for a renewal application.</p>

	So far Burdens Payments have also been paid to the Council by Government for the setting up and administration of Pavement Licences, but it is unclear whether this will continue
Legal, Statutory and Procurement	<p>The Business and Planning Act 2020 (As amended by the Levelling Up and Regeneration Act 2023) gives Council the power to grant pavement licences and deal with them thereafter.</p> <p>The Licensing Committee is able to delegate the administration and decision-making process of Pavement Licence functions to officers.</p> <p>Each application must be considered on its own merits with the ability to depart from the policy in appropriate circumstances.</p>
Crime and Disorder	It is important that Swale BC has a robust and accountable regulatory regime in relation to pavement licences in order to ensure fair trading and to protect consumers. Licensing regimes are designed to regulate licensable activities in such a way as to support the prevention/reduction of crime and disorder through the imposition of permissible conditions and appropriate enforcement
Environment and Climate/Ecological Emergency	There are no direct climate change implications for these proposals. In terms of environmental impact, licence holders will be required to keep the pavement used clean and clear of litter/rubbish and to ensure that tables and chairs and furniture are removed from the pavement by 11pm to prevent noise nuisance to nearby residential properties
Health and Wellbeing	The pavement licence arrangements require licence holders to make reasonable provision for outside seating where smoking is not permitted. Businesses must continue to have regard to smoke free legislation under the Health Act 2006, and the subsequent Smoke Free (Premises and Enforcement) Regulations 2006.
Safeguarding of Children, Young People and Vulnerable Adults	Whilst there are no specific elements of the pavement licence regime relating to the safeguarding of children and vulnerable adults, licensing regimes in general provide a means of regulating, which links in with safeguarding duties and responsibilities
Risk Management and Health and Safety	Failure to process and determine applications in a timely manner would lead to a number of deemed approvals with less control over their impact on the environment or the community.
Equality and Diversity	The Council has a legal obligation under section 149 of the Equality Act 2010 to have due regard to eliminate unlawful discrimination and to promote equality of opportunity and good relations between persons of different groups. There are mandatory conditions involved with Pavement Licences which relate to persons with disabilities
Privacy and Data Protection	As Pavement Licences involve the processing of personal data, GDPR and Data Protection Act 2018 principles are followed

7 Appendices

7.1 The following documents are to be published with this report and form part of the report:

- Appendix I: Draft Pavement Licence policy
- Appendix II: Summary of changes to policy

8 Background Papers

Business and Planning Act 2020
Levelling Up and Regeneration Act 2023