

# Agenda

## Licensing Committee Meeting

Date: Thursday, 19 October 2023

Time 7.00 pm

Venue: Council Chamber, Swale House, East Street, Sittingbourne, ME10 3HT\*

Membership:

Councillors Derek Carnell (Chair), Roger Clark, Simon Clark, Carole Jackson, Mark Last, Rich Lehmann, Ben J Martin, Lee-Anne Moore, Tara Noe, Tom Nundy, Chris Palmer, Paul Stephen, Angie Valls, Mike Whiting and Tony Winckless (Vice-Chair).

Quorum = 5

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Pages

### Information about this meeting

\*Members of the press and public can listen to this meeting live. Details of how to join the meeting will be added to the website by 18 October 2023.

### Recording and Privacy Notice

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When joining a meeting online, your username will be visible to others in attendance. In joining the meeting you are consenting to us processing your username. You may use a pseudonym as your username but the use of an inappropriate name may lead to removal from the meeting.

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#### 1. Emergency Evacuation Procedure

Visitors and members of the public who are unfamiliar with the building and procedures are advised that:

- (a) The fire alarm is a continuous loud ringing. In the event that a fire drill is planned during the meeting, the Chair will advise of this.

- (b) Exit routes from the chamber are located on each side of the room, one directly to a fire escape, the other to the stairs opposite the lifts.
  - (c) In the event of the alarm sounding, leave the building via the nearest safe exit and gather at the assembly point on the far side of the car park. Do not leave the assembly point or re-enter the building until advised to do so. Do not use the lifts.
  - (d) Anyone unable to use the stairs should make themselves known during this agenda item.
2. Apologies for Absence
  3. Minutes

To approve the [Minutes](#) of the meeting held on 15 February 2023 (Minute Nos. 652 - 657) as a correct record.

To accept the minutes of the following Licensing Sub-Committee meetings:

[23 February 2023](#) (Minute Nos. 703 – 708);  
[2 March 2023](#) (Minute Nos. 752 – 756);  
[27 April 2023](#) (Minute Nos. 830 – 834);  
[4 July 2023](#) (Minute Nos. 165 – 169);  
[6 July 2023](#) – reconvened (Minute Nos. 178 – 182);  
[31 August 2023](#) 10 am (Minute Nos. 230 – 234);  
[31 August 2023](#) 2 pm (Minute Nos. 235 – 239);  
10 October 2023 10 am (Minute Nos. to-follow);  
10 October 2023 2 pm (Minute Nos. to-follow).

4. Public Session

The Council operates a scheme of public speaking at meetings of the Licensing Committee. Requests to speak at the meeting must be registered by Democratic Services by noon on Wednesday 18 October 2023 and must be related to an item on the Agenda. Each speaker has a maximum of three minutes to speak.

5. Declarations of Interest

Councillors should not act or take decisions in order to gain financial or other material benefits for themselves, their families or friends.

The Chair will ask Members if they have any disclosable pecuniary interests (DPIs) or disclosable non-pecuniary interests (DNPIs) to declare in respect of items on the agenda. Members with a DPI in an item must leave the room for that item and may not participate in the debate or vote.

Aside from disclosable interests, where a fair-minded and informed observer would think there was a real possibility that a Member might be biased or predetermined on an item, the Member should declare this

and leave the room while that item is considered.

Members who are in any doubt about interests, bias or predetermination should contact the monitoring officer for advice prior to the meeting.

**Part A Report for Recommendation to Council**

6. Street Trading Policy 5 - 28

**Part B Report for the Licensing Committee to decide**

7. Pavement Licence Policy 29 - 52

**Issued on Monday, 9 October 2023**

The reports included in Part I of this agenda can be made available in alternative formats. For further information about this service, or to arrange for special facilities to be provided at the meeting, please contact **DEMOCRATIC SERVICES** at [democraticservices@swale.gov.uk](mailto:democraticservices@swale.gov.uk) . To find out more about the work of this meeting, please visit [www.swale.gov.uk](http://www.swale.gov.uk)

**Chief Executive, Swale Borough Council,  
Swale House, East Street, Sittingbourne, Kent, ME10 3HT**

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<b>Licensing Committee Meeting</b>	
<b>Meeting Date</b>	19 <sup>th</sup> October 2023
<b>Report Title</b>	Swale BC Street Trading Policy 2024 - 2027
<b>EMT Lead</b>	Emma Wiggins, Director of Regeneration and Neighbourhoods
<b>Head of Service</b>	Charlotte Hudson, Head of Housing and Community Services
<b>Lead Officer</b>	Christina Hills, Licensing Team Leader
<b>Classification</b>	<b>Open</b>
<b>Recommendations</b>	<ol style="list-style-type: none"><li>1. Members to consider the draft Swale BC Street Trading Policy 2024 – 2027 for consultation and advise on any relevant amendments</li><li>2. Members to note the policy consultation process as outlined and to instruct officers to proceed with the same</li></ol>

## **1 Purpose of Report and Executive Summary**

- 1.1 To present members with a draft revision of the current Swale BC Street Trading Policy 2024 – 2027 for Members comments prior to consultation.

## **2 Background**

- 2.1 Under Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982, a local authority may regulate street trading in their area. Swale BC has adopted these provisions for the whole of its area and on 23<sup>rd</sup> July 2010 designated all streets in the area as 'consent streets'.
- 2.2 The effect of this designation is that any street trading in any street is prohibited, subject to legal exemptions, without first obtaining a street trading consent from the Council. Swale BC has had a policy in place since 2013. There is no statutory requirement for a local authority to have a formal Street Trading policy; however, a Council can choose to adopt such a policy.
- 2.3 The adoption of a Policy benefits customers as well as reassuring the general public and other public bodies. It also reinforces effective practices and ensures proportionate, consistent and targeted regulator activity, whilst also developing a transparent and effective dialogue and understanding between regulators and those we regulate.
- 2.4 The current edition of the Swale BC Street Trading Policy was firstly adopted by full Council on 31<sup>st</sup> March 2021. This was then subject to some amendments which were approved by Licensing Committee on 15<sup>th</sup> February 2023

<https://services.swale.gov.uk/meetings/documents/s25130/Street%20Trading%20Report.pdf> and adopted by full Council on 5<sup>th</sup> April 2023. The amended policy is available to view at <https://swale.gov.uk/news-and-your-council/strategies-and-policies/street-trading-policy>

2.5 As the policy is subject to renewal at three yearly intervals it is now time for the policy to be reviewed to run for a period from 1<sup>st</sup> April 2024 – 1<sup>st</sup> April 2027.

### **3 Proposals**

3.1 As the current policy has been subject to scrutiny and amendment and is now working well, there are no proposed changes except for the following:

- New paragraph 7.17 to explain procedure for ‘one-off’ consents
- Appendix I – ‘documents to provide on application’ where the following has been inserted:
  - Public Liability Insurance to the value of £5,000,000
  - Copy of food hygiene certificate where applicable

It is confirmed that these documents have always been included as requirements on the application form and have always been requested but were not included within the policy.

3.2 The draft policy is shown attached as **Appendix I**.

### **4 Alternative Options Considered and Rejected**

4.1 Members could consider not consulting on the proposed policy; however, this would not accord with good governance, or give interested parties an opportunity to comment on the policy and make representations about it. Therefore, this option is not recommended.

### **5 Consultation Undertaken or Proposed**

5.1 It is proposed that an eight-week consultation takes place to run between 1<sup>st</sup> November 2023 – 29 December 2023. Methods of consultation will be by advertising on the Council’s website and where appropriate by email and post.

5.2 Consultees will be the following:

- Ward, Parish and Town Councillors
- Existing licence holders
- Event organisers for larger events such as Faversham Hop Festival and town Christmas Lights events
- The general public

- Kent Police
- KCC Highways
- Swale Safety Advisory Group (which includes various departments of the Council such as Environmental Health, Planning, Property Services, Economy and Regeneration, Green Spaces teams)

5.3 All incoming responses will be entered onto a grid for consideration. The Community Services Manager together with licensing officers will conduct an evaluation of each response and give a recommendation as to whether or not to amend the policy statement. The grid and recommendations will be put before a future meeting of the Licensing Committee for consideration and inclusion of any amendments for endorsement, prior to formal adoption by full Council.

## 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>There are indirect links to:</p> <p>Priority 3:</p> <p>3.4 Ensure that the council plays a proactive role in reducing crime and antisocial behaviour.....</p> <p>3.5 Promote wellbeing and enjoyment of life by signposting and encouraging a wide range of sporting, cultural, leisure and development activities appropriate and accessible to each age group.</p>
Financial, Resource and Property	<p>There are no direct financial implications for Swale Borough Council concerning this draft Policy as the consultation is being carried out by officers. However, if at any time in the future the policy was subject to legal challenge, there could be costs associated with this process.</p>
Legal, Statutory and Procurement	<p>The relevant legislation in relation to street trading is contained within Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 (as amended).</p>
Crime and Disorder	<p>It is a criminal offence to trade in the street without an appropriate consent. The policy provides a framework for consistent decision-making</p>

Environment and Climate/Ecological Emergency	No implications
Health and Wellbeing	No implications
Safeguarding of Children, Young People and Vulnerable Adults	Licensing regimes are largely designed to protect public safety. DBS checks for Street Trading Consents are deemed to be necessary in some circumstances but not all to check that applicants are suitable to trade.
Risk Management and Health and Safety	It is important that Swale BC has a robust and accountable regulatory regime in relation to street trading in order to ensure fair trading, prevent crime and to protect consumers
Equality and Diversity	<p>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.</p> <p>When considering street trading consent applications, only issues provided for in Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 and provided for in the Street Trading policy for Swale BC will be taken into account. This will ensure a consistent approach is adopted. Under the terms of the policy, every application will be considered on its own merits.</p>
Privacy and Data Protection	Normal data protection and privacy rules will apply

## 7 Appendices

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

- Appendix I: Draft revision of the current Swale BC Street Trading Policy 2024 – 2027

## 8 Background Papers

None.



## Swale Borough Council



### Street Trading Policy

Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982

**Version 1.0**

**1 April 2024**

**Next Scheduled Review: 1 April 2027**

All enquiries relating to this document should be sent to:

Licensing  
Swale Borough Council  
Swale House  
East Street  
Sittingbourne  
Kent  
ME10 3HT

[licensing@swale.gov.uk](mailto:licensing@swale.gov.uk)

## Issue & Review Register

<b>Summary of Changes</b>	<b>Issue Number &amp; Date</b>	<b>Approved by</b>

All changes to this document are tracked using a different colour and/or marked with a vertical line at the side of the page.

If amendments have been made, this will be redistributed to all named on the distribution list.

Compiled by: Christina Hills

Date:

Approved by:

Date:

### **Changes and Corrections**

Any changes or corrections required should be notified in writing to:

Licensing  
 Swale Borough Council  
 Swale House  
 East Street  
 Sittingbourne  
 Kent  
 ME10 3HT

Or

[licensing@swale.gov.uk](mailto:licensing@swale.gov.uk)

## Street Trading Policy 2024 - 2027

### Local Government (Miscellaneous Provisions) Act 1982 Street Trading Local Policy Document

#### 1. Legislation & Policy

- 1.1 Local Authorities have a legal discretion to regulate street trading in their area. Street trading is covered by the Local Government (Miscellaneous Provisions) Act 1982 Schedule 4 – Street Trading, which Swale Borough Council adopted in 1993 and resolved to control within its boundaries.

On 23<sup>rd</sup> July 2010 the Council formally designated all streets within its boundaries as ‘Consent Streets’.

The effect of this designation is that if you want to sell goods on the street (see para 3.2. for definition), you are street trading (see para 3.1 for definition) and you will need to have the appropriate consent from the Council unless you are legally exempt (see para 3.5).

Trading without the required consent is a criminal offence.

- 1.2 Swale Borough Council adopted this policy on 31<sup>st</sup> March 2024 to become effective on 1<sup>st</sup> April 2024.

Every three years the Policy will undergo a full review involving widespread consultation with the existing traders, relevant authorities and the general public, any consultation will be in line with Government guidelines.

#### 2. Purpose & Objectives

- 2.1 Street trading can add variety and vibrancy to the character of this Borough as well as diversity of shopping opportunities. The aim of the Council is to give consent to traders who will help to create a vibrant street scene which complements retail activity, community events and activities.
- 2.2 The purpose of this policy is to provide a framework setting out the Council’s procedures which will be used to inform the various decision making processes to ensure a consistent approach and expectations of those engaged in street trading either from an individual pitch as a mobile trader or as part of a large scale event/festival
- 2.3. This policy aims to give clarity and transparency to potential and existing traders, explaining how the Council will promote its objectives and deliver compliance with imposed conditions.

The Council's key objectives are:

- 2.3.1 To protect the public through the control of street trading within Swale by improving standards of food safety, health and safety and environmental management to enhance the image of the area
- 2.3.2 To ensure that permitted street trading is properly regulated as to where, when and how it takes place.
- 2.3.3 To prevent public nuisance by the use of conditions designed to reduce the risk of nuisance from obstruction, noise, refuse, vermin, fumes and smells.
- 2.3.4 To ensure the suitability of the structures used for the sale of goods.
- 2.3.5 To ensure that traders and the people that they employ are 'fit and proper' in accordance with the Act. This will include a requirement for a basic Disclosure and Barring Service Criminal Records check for those applicants applying for a 6 month or yearly consent are ok.

### **3. Street Trading Definition and Exemptions**

- 3.1 Street Trading is defined under the Act as 'selling, exposing or offering for sale any article (including a living thing) in a street'.
- 3.2 A 'street' is broadly defined to include any road, footway, beach or other area to which the public have access without payment and a service area as defined in s.329 of the Highways Act 1980.
- 3.3. This can include areas adjacent to a street, car parks and privately owned land where the public have access, without payment, as a matter of fact.
- 3.4 Street trading includes the sale of food and beverages. It does not include the provision of services (such as face painting or hair braiding) even if payment is made.
- 3.5 The following activities are **exempt** from the need to obtain a street trading consent under the Act:
  - 3.5.1 Trading by a person acting as a pedlar under the grant of a Pedlar's Certificate granted under the Pedlars Act 1871 and issued by the police – see 3.7 below
  - 3.5.2 Anything done in a market or fair, the right to hold which was acquired by virtue of a grant (including a presumed grant) or acquired or established by virtue of an enactment or order. This means markets that have a 'charter' or are permitted by other legislation e.g. The Food Act 1984. All other so called 'markets' will require a Street Trading Consent and for the purposes of this policy will be referred to as 'events' to avoid confusion.

- 3.5.3 Trading in a trunk road picnic area as defined in Section 112 of the Highways Act 1980.
- 3.5.4 Trading carried out as a news vendor selling newspapers or periodicals (only without a stall/receptacle) or one which is not over 1m long or wide or over 2m high.
- 3.5.5 Trading carried out at a petrol filling station.
- 3.5.6 Trading which is carried out at a premises used as a shop or in a street adjoining premises so used and as part of the business of the shop
- 3.5.7 Trading carried out by a 'roundsman' e.g. milk deliveries. However, this does not include ice cream sellers and mobile catering vehicles
- 3.5.8 Use for trading from an object or structure placed on, in or over the highway under Part VIIA of the Highways Act 1980
- 3.5.9 The operation of facilities for recreation or refreshment under Part VIIA of the Highways Act 1980.
- 3.5.10 Doing anything authorised as a public charitable collection made under section 5 of the Police, Factories, etc (Miscellaneous Provisions) Act 1916 – see 11.4 below
- 3.6 Trading at the following events requires a Street Trading Consent but no fee will be charged:
- 3.6.1 Street Trading at Fetes and Carnivals – outdoor events for which no entry fee is charged staged mainly for public entertainment and benefiting charitable concerns. It is expected that at least some of the monies raised will be contributed to the beneficiary individual, organisation or charity.
- 3.6.2 Street Trading at non-commercial or charitable events for which no entry fee is charged organised by not-for-profit organisations and charitable trusts.
- 3.7 As detailed in 3.5 above pedlars acting under a certificate are exempt. However, a pedlars' certificate is not required to sell food, and such sales are not exempt, although some traders do have certificates. If the sale is in a street, then it will be street trading and require the appropriate consent.
- 4. Consideration of an application for a Street Trading Consent - location**
- 4.1 The Council does not designate pitches and applicants must therefore propose trading which is compatible with the location being applied for. When considering the proposal, the Council will have regard to other trading taking place in the immediate vicinity.

The aim of this policy is not to discourage competition, rather to ensure an appropriate mix of trading so as to avoid over saturation of any given area. Every application will be considered on its own merits.

Consent will not usually be given for any fixed locations where:

- 4.1.1. Road safety would be compromised either from the siting of the trading activity itself, or from customers visiting or leaving the site.
  - 4.1.2. There would be a significant loss of amenity to those in the area caused by additional traffic, or disturbance (e.g. noise, odour or fumes, etc.)
  - 4.1.3. There is already significant provision of similar goods in the immediate vicinity of the site to be used for street trading purposes.
  - 4.1.4. There is a conflict with Traffic Management Orders such as waiting restrictions.
  - 4.1.5. The trading obstructs either pedestrian or vehicular access, or traffic flows, or places pedestrians in danger.
  - 4.1.6. The Consent Holder, staff and customers have no appropriate place to park in a safe manner, if required
  - 4.1.7. The pitch would be sited on the A249 or M2 as these locations are prohibited by Highways England. Layby's on any other road will be considered on a case by case basis.
  - 4.1.8. The pitch would be on a council owned carpark
- 4.2 The consent holder must be granted permission for the use of any land adjacent to the highway from the landowner and adjoining landowners where appropriate. The granting of a consent does not imply that landowners permission has been granted;

Consent to trade does not imply the grant of planning permission and applicants are strongly recommended to consult the Planning Department to check if permission is required prior to commencement of trading

## **5. Application Procedure**

- 5.1 Only persons aged eighteen or over may apply for consent. However, a person under eighteen may be employed as an assistant.
- 5.2 New applications for sole traders will be determined following a 28 consecutive day consultation period.
- 5.3 One - Off Consents. The Council will grant one-off consents up to a maximum of 12 times per calendar year. These types of consents include events that are not exempt from street trading requirements under separate legislation.

- 5.3.1 One-off consents can last for up to 4 days.
- 5.3.2 Each individual trader at an event must obtain their own consent. However, event organisers can co-ordinate the applications.
- 5.3.3 Applications for one-off consents must be submitted no later than 7 days before the event.
- 5.4 All applicants for the consents above will be required to provide documents as shown at Appendix I.

#### 5.5 Renewal applications - For sole traders

- 5.5.1 Applicants should submit their renewal application at least 8 weeks prior to the expiry of their consent if they wish to continue to trade. The Council will normally send reminders of the expiry of consents three months before expiry. It does however, remain the responsibility of the trader to ensure that an application is submitted in time for the consent to be renewed.
- 5.5.2 At renewal, the Council will only consult if there are any concerns regarding the street trader or if there have been any complaints.
- 5.5.3 Where a renewal application has been made and there have been no justifiable complaints, no enforcement issues and all fees have been paid on time, the consent will normally be renewed.
- 5.5.4 Where a renewal application has been made and there have been complaints or enforcement issues which did not result in revocation then the application may be rejected. The council may choose to consult with such agencies and interested parties it considers relevant in this regard before making a decision.
- 5.5.5 Applicants will need to submit documents as shown in Appendix I.

### 6. **Consent Fees**

- 6.1 The Council can charge such fees as it considers reasonable and will recover the cost of administration and compliance.

Payment will be required for the following street trading applications:

- a) An annual consent for a fixed location or non-fixed location (mobile traders)
- b) A six month consent for a fixed location or non-fixed location (mobile traders)

- c) A One-off consent for individual traders where there is no exemption applicable (an event)

The Council's adopted fees, for the above-mentioned applications, are shown in Appendix III of this Policy.

## **7. How the Council makes its decisions**

- 7.1. The Council is bound to act reasonably and consistently with its general obligations (e.g. those under the Human Rights Act and Equalities Act) but has a wide discretion when making a decision to give consent for Street Trading. The Council does not have to rely upon specific statutory grounds in order to refuse an application for Street Trading consent or whether or not to renew that consent.
- 7.2 The Licensing section will assess the proposed location, taking into consideration the concerns raised in Section 4 of this policy. The application will then be consulted with various public serving authorities and Council services. The consultees who will be consulted on all applications are:
  - a) Kent Police
  - b) Kent Fire and Rescue Service
  - c) KCC Highways
  - d) Swale BC Environmental Health
  - e) Swale BC Environmental Response Team
  - f) Swale BC Planning
  - g) Swale BC Property Services
  - h) Swale BC Economy and Community Services
  - i) Swale BC Green Spaces team
  - j) Ward Councillors
  - k) Parish and Town Councils
  - l) KCC Safeguarding Unit

And in some cases:

- m) Other businesses/organisations if it is considered that they are likely to be affected by a successful application

The consultation will run for 28 consecutive days.

- 7.3. A representation will be considered to be relevant if it is made by a person, business or body that is likely to be directly affected by a successful application.
- 7.4 If the Licensing section receives a representation then it will be forwarded to the applicant for their comment. The name and address of the objector will



- be published unless the Council receive a request for this not to be done for a good reason. The Council will not accept anonymous representations.
- 7.5 Any comments that the applicant may wish to make should be received by the Licensing section within 10 working days of the applicant being notified of the representation.
- 7.6 If the representations cannot be mediated and remain unresolved the application will be referred to the Licensing Sub-Committee. The hearing will normally take place within 20 days from the end of the consultation period.
- 7.7 A Licensing Officer will be responsible for preparing a report for Licensing Sub-Committee, which will be made available to the applicant at least five working days before the date of the meeting. The applicant and the persons making representations will be invited to attend and will be advised in writing of the date, time and place when the application will be heard. Any party can be represented by a lawyer or supported by a representative of their choice.
- 7.8 The Committee may grant the consent as applied for or impose additional restrictions limiting the days and/or times when street trading is permitted. In some circumstances the Committee may restrict the goods which may be sold, the size of the trading pitch or any other relevant detail, depending on the specifics of the application. The Committee could also refuse the application.
- 7.9 If an application for consent is refused following a decision by a Licensing Officer, an applicant can make a written appeal to the Community Safety Manager, who will reconsider the case based on any new evidence given.
- 7.10 If an applicant's appeal is rejected, they will be made aware of the reasons for refusal and advised the only right of appeal against the Council's decision is by way of Judicial Review.
- 7.11 A Judicial Review is where a decision is made by a High Court Judge who will look at all aspects of the application and decide whether or not the Council has acted lawfully
- 7.12 The Council can revoke any street trading consent after it has been given.
- 7.13 In these circumstances, the Council will give notice of any intent to revoke a street trading consent, which will provide a detailed explanation as to why the consent has been revoked. The Council reserves the right to put any contentious matters before the General Licensing Sub-Committee.
- 7.14 If an application is refused or renewal is refused or consent is revoked, following a decision made by the Licensing Sub-Committee applicants will be

advised the only right of appeal against the Council's decision is by way of Judicial Review..

- 7.15 Applicants can also make a formal complaint to the Council at [www.swale.gov.uk/compliments-and-complaints](http://www.swale.gov.uk/compliments-and-complaints)
- 7.16 Where a consent is refused the Council may refund the fee, or a part of it as it considers appropriate. Refunds will be considered on a case by case basis.
- 7.17 All of the above relates to applications for 6 monthly or yearly consents. In respect of 'one-off' consents then no consultation will take place and provided the correct documentation is received as detailed at Appendix 1 the consent will normally be granted as these type of consents are intended to be 'light touch' and usually traders are participating in events which will have been through the Safety Advisory Group process.

## **8. Surrendering a Street Trading Consent**

- 8.1 The consent holder may at any time surrender in writing the consent issued to them. Where a consent is surrendered, the Council is under a duty to remit or refund the whole or part of the fee paid for the Consent as they consider appropriate as shown at para 9(5) of the Local Government (Miscellaneous Provisions) Act 1982.

## **9. Conditions**

- 9.1 The Council has adopted standard conditions, as shown in Appendix II, based on the objectives and expectations set out in this policy document as well as the responsibilities of each trader, which will be attached to each Street Trading Consent. Additional conditions may be imposed, or amendments made to the standard conditions, should specific circumstances make this reasonably necessary. Breach of conditions could ultimately lead to enforcement action, which may include, but is not limited to the revocation of a Consent.
- 9.2 The Council may amend the consent conditions at any time. Any substantial amendment to the standard conditions would involve consultation with all affected parties and the responses being presented before the Licensing Committee for formal adoption. Once adopted the amended conditions will be imposed on all existing consent holders immediately thereafter or as decided by Committee.
- 9.3 Failure to comply with our standard conditions may lead to enforcement action, which may include, but is not limited to consent being revoked by the Council. This may affect any future applications.

## **10. Enforcement**

- 10.1 A person engaging in street trading without consent, trading from a stationary van, barrow, other vehicle or portable stall without specific permission for that trading or who fails to comply with conditions at time of trading or location, will be guilty of an offence and may be liable to prosecution under paragraph 10 of Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982.
- 10.1.1 It is also an offence to make a false statement which you know to be false in any material respect or which you do not believe to be true in connection with an application for consent.
- 10.1.2 These offences are punishable on conviction with a fine up to £1,000.
- 10.2 The aim of enforcement within the borough of Swale, is to protect the health and safety and welfare of the public who may be exposed to risks from unauthorised or poorly run street trading. We aim to:
- a) Ensure that all street traders are fit and proper to trade
  - b) Promote compliance with the law
  - c) Ensure those who fail to abide by the Standard Conditions or relevant legislation (depending on the nature of the business) are held accountable, which may result in prosecution or revocation of their consent
  - d) Be proportionate and consistent in our dealings with applicants and consent holders
  - e) Be transparent, open and honest
- 10.3 Decisions regarding enforcement action will be made in accordance with this policy, the Swale BC Enforcement Policy, Licensing Enforcement Policy and on a case-by-case basis. The enforcement function for any breaches in legislation is currently delegated to the Community Safety Manager, supported by Licensing Officers.
- 10.4 In regard to ice cream traders, a 'Code of Conduct', issued by the Department for Environment Food and Rural Affairs ([www.defra.gov.uk](http://www.defra.gov.uk)) provides guidance to traders and Local Authorities on aspects of the trade such as the sounding of chimes. The Local Authority's Environmental Department may refer to this guidance when investigating allegations of noise nuisance.
- 10.5 The licensing team will only carry out enforcement on Ice Cream Sellers in the following circumstances:
- a) Trading without a consent
  - b) Trading in an area not specified on the Street Trading Consent
  - c) Trading outside of the permitted hours
- 10.6 Enforcement of the following will be carried out by other departments of the Council:

- a) Incorrect disposal of waste
- b) Health and Safety/ Food Hygiene and Environmental Issues

## **11. Other Legislative Requirements – This is not intended as an exhaustive list**

- 11.1 Any food traders would need to be compliant with food hygiene regulations. All food businesses that prepare, sell, store or cook foods and drinks need to register as a food business with Environmental Health.
- 11.2 Where food is sold the consent holder must comply at all times with ALL current hygiene legislation.
- 11.3 Exposing vehicles for sale on a road is regulated under Section 3 of the Clean Neighbourhoods and Environment Act 2005. Complaints relating to commercial sales, of two or more vehicles within 500 metres of each other should be reported to Swale BC Environmental Response Team.
- 11.4 Persons collecting money under section 5 of the Police, Factories, etc (Miscellaneous Provisions) Act 1916 require a Street Collection Permit from the Council but not a Street Trading Consent.
- 11.5 Some charities employ collectors who canvass the public in order to obtain a direct debit mandate to contribute to the charity (these collectors are sometimes known as ‘chuggers’). This type of collection requires neither a Street Collection Permit nor a Street Trading Consent. However, Swale Borough Council does have an expectation that all proposed collectors of this type will contact the relevant market manager or the licensing team to liaise over the location, days and times that this type of activity will take place, especially to ensure that they do not interfere with any markets or events taking place. It is expected that there will be no tables or structures such as gazebos erected by the collectors. Most important is the expectation that direct debit collectors will behave in a respectful and courteous manner toward members of the public and not harass them in any way.
- 11.6 Promotional stands are not covered under this legislation as no sale takes place. However, there is an expectation that anyone wishing to erect such a stand should, in the first instance contact the relevant market manager or licensing team to check suitable locations so as not to interfere with any events or markets that may be taking place.
- 11.7 Any sale of alcohol will also require a Temporary Events Notice (TEN) under the Licensing Act 2003. The notice period for giving a standard TEN is statutory and is 10 clear working days between and not including serving the

notice and the date of the event. A late TEN requires at least 5 clear working days' notice between and not including serving the notice and the date of the event.

- 11.8 There are limits on the number of standard TEN's and late TEN's that can be applied for within a year.
- 11.9 In respect of a consent issued to an Event Organiser, it is the responsibility of the organiser to ensure that any stall wishing to sell alcohol is aware of the requirement for a TEN.

## **12. Data Retention**

- 12.1 Under the General Data Protection Regulations the Council has set out the period of time that personal information shall be retained.
- 12.2 All personal information provided on an unsuccessful application, will be retained for a period of six months before being destroyed.
- 12.3 All personal information relating to the consent holder, irrespective of its level of sensitivity, will be retained for the period of consent; once the consent has expired or been revoked or the trader notifies the Council they no longer wish to have consent; the information shall be retained for a period of 24 months before being destroyed. DBS checks will not be retained by the Council

## Appendix 1 – Documents to provide on application

New Applications and Renewal Applications	One off consents
<p>A completed and signed street trading consent application form. Applications forms are available online at <a href="https://www.swale.gov.uk/street-trading-consent">https://www.swale.gov.uk/street-trading-consent</a> by email at <a href="mailto:licensing@swale.gov.uk">licensing@swale.gov.uk</a> or they can be sent by post on request from the licensing team</p>	<p>A completed and signed street trading consent application form. Applications forms are available online at <a href="https://www.swale.gov.uk/street-trading-consent">https://www.swale.gov.uk/street-trading-consent</a> by email at <a href="mailto:licensing@swale.gov.uk">licensing@swale.gov.uk</a> or they can be sent by post on request from the licensing team</p>
<p>The application form must be accompanied by the full fee (unless para 3.6 applies and no fee is due). Details of fees are shown at Appendix III</p>	<p>The application form must be accompanied by the full fee (unless para 3.6 applies and no fee is due). Details of fees are shown at Appendix III</p>
<p>Where the proposed street trading activity is from a fixed position, a plan showing the precise trading position and its proximity to other similar retail outlets within a 100 metre radius. The proposed position and orientation of the stall, van, barrow, cart etc. is to be shown on the plan. The plan shall also include any additional vehicles that will be parked on the site</p>	
<p>Ice Cream Vans and Mobile Food Vans are exempt from providing location plans unless the van is stationary. However, details should be given of the proposed route/streets/stopping places where it is intended street trading will take place as well as the proposed trading hours. This may vary from day to day.</p>	
<p>One colour photograph of the stall, van, barrow, cart that will be used for street trading activity. The photograph shall show any proposed awnings fully extended, whether integral or not.</p>	<p>Event organisers do not need to provide photographs of the individual pitches but must provide a numbered site plan of pitches together with a list giving the name of each individual trader</p>

One passport size colour photograph of the applicant. If there are assistants, then they too must supply a photograph of themselves	
If the land is privately owned, written permission from the land owner, this includes Kent County Council Highways.	If the land is privately owned, written permission from the land owner this includes Kent County Council Highways.
Applicants and where applicable their assistants, must submit a Standard Disclosure and Barring Service criminal records check. This can be obtained as shown below: Email: <a href="mailto:customerservices@dbs.gsi.gov.uk">customerservices@dbs.gsi.gov.uk</a> Phone: 03000 200 190 Address: PO Box 165. Liverpool L69 3JD  The original certificate must accompany the application form and must be submitted within one month of issue. .	
Public Liability Insurance to the value of £5,000,000	Public Liability Insurance to the value of £5,000,000
Copy of food hygiene certificate where applicable	Copy of food hygiene certificate where applicable
Evidence of the right to work in the UK. Documents that demonstrate this are attached as Appendix IV.	Evidence of the right to work in the UK. Documents that demonstrate this are attached as Appendix IV.

**Appendix II: General Consent Conditions**

1. When consent is granted the consent holder will be issued with formal written consent which shall be available for inspection by authorised officers of the Council or the Police at any time that trading is taking place.
2. When consent is granted the Consent Holder and any assistants will be issued with a badge, which must be worn at all times while street trading.
3. The consent holder shall ensure their street trading activities subject to consent do not create any obstruction to the flow of pedestrians or other traffic using the street or part of the street to which their consent relates or create any danger to persons using it.
4. The consent holder shall ensure that their street trading activities subject to consent do not cause a nuisance or annoyance, to person(s) or residents using the street or part of the street or running a business within the vicinity of where their consent applies.
5. No signs advertising the trading shall be placed where it can cause an obstruction to vehicles or pedestrians using the street.
6. Where food is sold the consent holder must comply at all times with ALL current hygiene legislation.
7. No street trading will take place within 400 metres of a school.
8. Consent holders must identify their preferred method of waste disposal at the time of making their application, and keep records of their waste management, which must be available, upon request by Swale Borough Council's Licensing or Environmental Department or from the Environment Agency.
9. The consent holder shall not deposit trade refuse or litter of any kind on the street or part of the street to which their consent relates; (Note under the Environmental Protection Act 1990 everyone has a duty of care to dispose of any refuse in a correct manner.)
10. The consent holder shall at the end of each trading day or session, whichever is the shortest, clear around their permitted site.
11. It is recommended that a licence holder has a waste management plan in place, to ensure that:



- a) Suitable waste containers will be made available to customers, where it is appropriate, for any potential waste products generated by the sale of goods.
- b) No waste liquids shall be disposed of into any highway channel, gully or manhole or in any other manner which is likely to cause pollution of any surface water channel.
- c) All refuse generated by the business must be taken to a licensed waste disposal site.

**Appendix III: Current Fees and Charges**

Annual Consent	£143.00
6 Month Consent	£71.50
One-Off Consent	£10.00

**Appendix IV:****Documents which demonstrate entitlement to work in the UK**

1. A passport showing the holder, or a person named in the passport as the child of the holder, is a British citizen or a citizen of the UK and Colonies having the right of abode in the UK.
2. A passport or national identity card showing the holder, or a person named in the passport as the child of the holder, is a national of a European Economic Area country or Switzerland.
3. A Registration Certificate or Document Certifying Permanent Residence issued by the UKVI to a national of a European Economic Area country or Switzerland.
4. A Permanent Residence Card issued by the UKVI to the family member of a national of a European Economic Area country or Switzerland
5. A **current** Biometric Immigration Document (Biometric Residence Permit) issued by the UKVI to the holder indicating that the person named is allowed to stay indefinitely in the UK, or has no time limit on their stay in the UK.
6. A **current** Immigration Status Document issued by the UKVI to the holder with an endorsement indicating that the named person is allowed to stay indefinitely in the UK or has no time limit on their stay in the UK, **together with** an official document giving the person's permanent National Insurance number and their name issued by a Government agency or previous employer.
7. A birth (short or long) or adoption certificate issued by the UK which includes the name(s) of at least one of the holder's parents or adoptive parents, **together with** an official document giving the person's permanent National Insurance number and their name issued by a Government agency or a previous employer.
8. A birth (short or long) or adoption certificate issued in the Channel Islands, the Isle of Man or Ireland, **together with** an official document giving the person's permanent National Insurance Number and their name issued by a Government agency or a previous employer.
9. A certificate of registration or naturalisation as a British citizen, **together with** an official document giving the person's permanent National Insurance number and their name issued by a Government agency or a previous employer.

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<b>Licensing Committee Meeting</b>	
<b>Meeting Date</b>	19 <sup>th</sup> October 2023
<b>Report Title</b>	Pavement Licence Policy
<b>EMT Lead</b>	Emma Wiggins, Director of Regeneration and Neighbourhoods
<b>Head of Service</b>	Charlotte Hudson, Head of Housing and Community Services
<b>Lead Officer</b>	Christina Hills, Licensing Team Leader
<b>Key Decision</b>	<b>No</b>
<b>Classification</b>	<b>Open</b>
<b>Recommendations</b>	<ol style="list-style-type: none"> <li>1. That the draft Pavement Licence policy as set out in <b>Appendix I</b> to this report be adopted to run for a period from 1<sup>st</sup> November 2023 until 31<sup>st</sup> October 2026</li> <li>2. Members to note the comments made in the evaluation grid attached as <b>Appendix II</b> to this report.</li> </ol>

## 1 Purpose of Report and Executive Summary

- 1.1 At the Licensing Committee of 15<sup>th</sup> February 2023, a draft Pavement Licence policy under the Business & Planning Act 2020 was approved for public consultation. This report sets out the feedback received and recommends adoption of the policy.

## 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 30<sup>th</sup> September 2021, but this has been extended in subsequent years, the last extension being laid before parliament and adopted on 17<sup>th</sup> July 2023 so that fast track Pavement Licence provisions will continue to apply until 30<sup>th</sup> September 2024. There are currently 18 granted licences.
- 2.3 At present, applicants can choose to either apply for a Pavement Licence from Swale BC or for a tables and chairs licence from KCC as the highway authority under Part 7A of the Highways Act 1980. The difference between the 2 regimes is that a Pavement Licence has a 14-day determination period and costs a

maximum of £100 whereas a licence from KCC is subject to a 28-day consultation period and currently costs £240.

- 2.4 Members will note that at a meeting of the Licensing Committee of 4<sup>th</sup> October 2022 approval was given for the Communities Manager to have temporary delegated authority to determine applications for Pavement Licences and to decide whether to grant or refuse them. This delegation will last as long as the temporary provision does.
- 2.5 At this meeting Members requested that a policy be drafted to guide their decision making as well as inform businesses and the general public. It was in response to this request that the draft policy the subject of this report was developed.
- 2.6 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.
- 2.7 The current provisions contained within the Business and Planning Act 2020 for Pavement Licences give local authorities very limited enforcement powers with the power to require removal of unauthorised pavement furniture still resting with the highway authority i.e. Kent County Council. The adoption of a policy will not change this position for the time being.
- 2.8 However, the Government has made it known that there could be further extensions to Pavement Licence legislation in the future and these licences have also been included into the Levelling Up and Regeneration Bill with the intention of making them a permanent function of local authorities, giving greater enforcement powers to them than at present and to remove the function of tables and chairs licences from highway authorities. This has been taken into account when formulating the draft policy which will then be amended accordingly as the legislation changes.
- 2.9 If the proposed policy is formally adopted, it would be the intention to formally review it when the Levelling Up and Regeneration Bill becomes law and thereafter at 3 yearly intervals.

### **3 Proposals**

- 3.1 Members to consider the adoption of the draft Pavement Licence policy which is shown as **Appendix I** and which was firstly presented to Licensing Committee on 15<sup>th</sup> February 2023 before being put out to public consultation.

## 4 Alternative Options Considered and Rejected

- 4.1 Members could choose not to have a policy on Pavement Licences but as the request for the development of a policy came from a previous Licensing Committee meeting it is assumed to be implicit that Members want a policy.

## 5 Consultation Undertaken or Proposed

- 5.1 An eight-week consultation took place and ran between 27<sup>th</sup> February 2023 until 24<sup>th</sup> April 2023. Methods of consultation were by advertising on the Council's website and where appropriate by email and post.

- 5.2 Consultees were the following:

- KCC Highways Department
- Swale BC Environmental Health Service (including environmental protection and food and safety teams)
- Kent police
- Ward Councillors
- Existing licence holders

- 5.3 A total of 2 responses were received.

- 5.4 Licensing officers, in consultation with the Community Services Manager have conducted an evaluation of each response and have given comments and recommendations as to whether or not to amend the policy statements. The evaluation is shown as **Appendix II**.

## 6 Implications

Issue	Implications
Corporate Plan	<p>There are indirect links to Priority 1 –</p> <p>Priority 1.6 Implement the visitor economy framework to increase investment, address new visitor demands and grow the value of the sector to the Swale economy.</p> <p>Pavement Licences encourage a 'café culture' and thus encourage local people and visitors alike to visit local hospitality venues in our towns which supports the principals of local sustainability.</p>
Financial, Resource and Property	<p>Under section 2(1)(c) of the Business and Planning Act 2020 application fees for Pavement Licences are capped at £100. It has been decided to require the maximum permitted application fee of £100 for applications. Burdens Payments have also been paid to</p>

	the Council by Government for the setting up and administration of Pavement Licences.
Legal, Statutory and Procurement	The Business and Planning Act 2020 gives Council the power to grant pavement licences and deal with them thereafter.  Unlike certain licensing matters, the Licensing Committee is able to delegate the administration and decision-making process of Pavement Licence functions to officers.
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: Evaluation grid of responses received

## **8 Background Papers**

None

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## Swale Borough Council



### Pavement Licensing Policy

Business and Planning Act 2020

Version 1.0

Next Scheduled Review:

All enquiries relating to this document should be sent to:

Licensing  
Swale Borough Council  
Swale House  
East Street  
Sittingbourne  
Kent  
ME10 3 HT

[licensing@swale.gov.uk](mailto:licensing@swale.gov.uk)

## Issue & Review Register

Summary of Changes	Issue Number & Date	Approved by

Compiled by: Christina Hills, Licensing Team Leader

Date:

Approved by:

Date:

### **Changes and Corrections**

Any changes or corrections required should be notified in writing to:

Licensing  
Swale Borough Council  
Swale House  
East Street  
Sittingbourne  
Kent  
ME10 3HT

Or

[licensing@swale.gov.uk](mailto:licensing@swale.gov.uk)

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## 1. Introduction

The COVID-19 pandemic affected businesses across the economy causing many to cease trading for several months while others had to significantly modify their operations.

As the economy started to re-open, on 25 June 2020 the Government announced an urgent relaxation to planning and licensing laws to help the hospitality industry recover from the coronavirus lockdown by removing some requirements and expediting others.

Amongst other measures, the Business and Planning Act 2020 introduced a temporary fast-track process for premises serving food and drink such as bars, restaurants and pubs to obtain permission, in the form of a “pavement licence”, from Swale Borough Council for the placement of furniture such as tables and chairs on the pavement outside their premises which will enable them to maximise their and boost the economy.

Until then, street furniture permissions were granted as tables and chairs licences by Kent County Council, the Highways Authority, under Part 7A of the Highways Act 1980. The fee varies between local authorities and there is a 28-day consultation period.

The new temporary measure placed a cap on the application fee for businesses, and introduced a new 14-day determination period, ensuring that businesses could obtain licences in a timely and cost-effective manner to aid their financial recovery.

The original Pavement Licensing provisions were set to expire on 30 September 2020 however, these have been extended further, until 30 September 2024.

There are provisions contained within the Levelling Up and Regeneration Bill which will affect some of the processes detailed within this policy and these are discussed in Appendix 3.

## 2. Scope

### 2.1 Definition of Pavement Licence

A pavement licence is granted by the local authority, or deemed to have been granted, which allows the licence-holder to place removable furniture over certain highways adjacent to the premises in relation to which the application was made.

A licence permits a business to use 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

### 2.2 Eligible Businesses

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 licence. Businesses that are

eligible include: public houses, cafes, bars, restaurants, snack bars, coffee shops, and ice cream parlours.

### 2.3 Eligible Locations

Licences can only be granted in respect of highways listed in section 115A(1) Highways Act 1980.

Generally, these are footpaths restricted to pedestrians or are roads and places to which vehicle access is restricted or prohibited. Highways maintained by Network Rail or over the Crown land are exempt (so a licence cannot be granted).

### 2.4 Type of furniture permitted

The furniture which may be used are:

- Counters or stalls for selling or serving food or drink
- Tables, counters or shelves on which food or drink can be placed
- Chair, benches or other forms of seating
- Umbrellas, barriers, heaters or other articles used in connection with the outdoor consumption of food or drink.

This furniture is required to be removable, which in principle means it is not a permanent fixed structure, and is able to be moved easily, and stored away of an evening.

### 2.5 Planning Permission

Once a licence is granted, or deemed to be granted, the applicant will also benefit from deemed planning permission to use the land for anything done pursuant to the licence while the licence is valid.

## **3. Application and Determination of Pavement Licences**

### 3.1 Submission of the application

An application for a Pavement Licence must be made to the Council and the following will be required to be submitted with the application:

- a) a completed application form and fee of £100
- b) a plan showing the location of the premises shown by a red line, so the application site can be clearly identified
- c) a plan clearly showing the proposed area covered by the licence in relation to the highway, if not to scale, with measurements clearly shown. The plan must show the positions and number of the proposed tables and chairs, together with any other items that they wish to place on the highway. The plan shall include clear measurements of, for example, pathway width/length, building width and any other fixed item in the proposed area. The entrance to the premises must also be shown

- d) the proposed days of the week on which, and the times of day between which, it is proposed to put furniture on the highway,
- e) evidence of the right to occupy the premises (e.g. the lease);
- f) photos or brochures showing the proposed type of furniture and information on potential siting of it within the area applied;
- g) (if applicable) reference of existing pavement licence currently under consideration by the local authority;
- h) evidence that the applicant has met the requirement to give notice of the application (for example photographs of the notice outside the premises and of the notice itself);
- i) a copy of a current certificate of insurance that covers the activity for third party and public liability risks, to a minimum value of £5 million, and
- j) any other evidence needed to demonstrate how the Council's local conditions, and any national conditions will be satisfied.

### 3.2 Fees

The fee for applying for a licence under the Business and Planning Act 2020 is set locally but is capped at £100. Swale Council has determined that the fee for applications is £100.

Application fees must accompany the application in order for the application to be considered valid and for the consultation period to commence.

The fee can be paid using the Councils automated payment line 01795 417286 or on the Swale website <https://swale.gov.uk/business-licensing-and-procurement/licences-permits-and-consents/make-a-licensing-payment>

The fee is an 'application' fee for the processing of the application. The fee will not be refunded if the application is withdrawn, refused or if a licence is surrendered or revoked before expiration.

### 3.3 Consultation

Applications are consulted upon for 7 days, starting with the day on which a valid application is made to the Council

The Council will publish details of the application on its website at <https://swale.gov.uk/news-and-your-council/consultations>

The Council is required by law to consult with the Highways Authority. In addition, to ensure that there are not detrimental affects to this application the Council will also consult with:

- Swale BC Environmental Health Service (including environmental protection and food and safety teams)
- Ward Councillors

Members of the public and others listed above can contact the Council to make representations.



The Council must take into account representations received during the public consultation period and consider them when determining the application.

### 3.4 Site Notice

An applicant for a pavement licence must, on the day application is made, fix a notice of the application to the premises so that the notice is readily visible to, and can be read easily by passers-by. The notice must remain in place until the end of the public consultation period.

Evidence of the placement of the site notice must be emailed to the council at [licensing@swale.gov.uk](mailto:licensing@swale.gov.uk)

The Site Notice must:

- a) state that the application has been made and the date on which it was made
- b) state the statutory provisions under which the application is made
- c) state the address of the premises and name of the business
- d) describe the proposed use of the furniture
- e) indicate that representations relating to the application may be made to the Council during the public consultation period and when that period comes to an end
- f) state the Council's website where the application and any accompanying material can be viewed during the consultation period
- g) state the address to which representations should be sent during the consultation period
- h) the end date of the consultation (7 days starting the day after the application is submitted to the authority)

A template Site Notice is shown as **Appendix 1**.

### 3.5 Site Assessment

The following matters will be among those used by the Council and consultees in considering the suitability of the proposed application:

- a) Public health and safety – for example any reasonable crowd management measures needed and, if it were to become applicable again any government guidance on social distancing requirements
- b) Public amenity – would the proposed use create nuisance to neighbouring occupiers by generating anti-social behaviour and litter
- c) Accessibility – taking a proportionate approach to considering the nature of the site in relation to which the application for a licence is made, its surroundings and its users, taking particular account of:
  - Any other temporary measures in place that may be relevant to the proposal, for example, the reallocation of road space. This could include pedestrianised streets and any subsequent reallocation of this space to vehicles.

- Whether there are other permanent street furniture or structures in place on the footway that already reduce access
- The impact on any neighbouring premises
- The recommended minimum footway widths and distances required for access by mobility impaired and visually impaired people as set out in Section 3.1 of Inclusive Mobility publication [www.gov.uk/government/publications/inclusive-mobility](http://www.gov.uk/government/publications/inclusive-mobility)
- Other users of the space, for example if there are high levels of pedestrian or cycle movements

Applicants are strongly encouraged to talk to neighbouring businesses and occupiers prior to applying to the Council and to take any issues around noise, and nuisance into consideration as part of their proposal.

### 3.6 Determination

Once the application is submitted the Council has 14 days from the day after the application is made (excluding public holidays) to consult on and determine the application. This consists of 7 days of public consultation, and then 7 days to consider and determine the application after the consultation.

If the Council determines that application before the end of the determination period it can:

- Grant the licence in respect of any or all of the purposes specified in the application
- Grant the licence for some or all of the part of the highway specified in the application, and/or impose conditions
- Refuse the application

If the council does not determine the application within 14 days, the application will be deemed to have been granted.

### 3.7 Approval of applications

Swale Borough Council supports the aims of the Business and Planning Act 2020 and wishes to promote economic recovery and growth in its area and will therefore seek to grant applications for licences where possible.

However, this aim has to be balanced with the need to ensure that the issuing of Pavement Licences does not put public health or safety at risk, does not lead to anti-social behaviour and ensures that the public, particularly those with disabilities such as sight impairment are unhampered when walking along streets

The Council will consider the criteria contained within these guidelines in determining applications and will treat each case on its merits.

On approving the application, the Council will issue a Pavement Licence and attach conditions. The licence will also contain specific terms such as days and hours

when tables and chairs and other street furniture are permitted and if necessary, the appearance and location of the furniture corresponding to the application.

A copy of the Council's standard conditions, which will be attached to all Pavement Licences is shown at Appendix 2. Additional conditions may be attached if the Council considers it appropriate in the circumstances of any particular case.

### 3.8 Refusal of applications

If the site is deemed unsuitable for a Pavement Licence, or if relevant representations are made which cannot be mitigated by imposing conditions, then the application may be refused.

The Council may refuse an application on other grounds including (but not limited to) where the granting of the licence would put at risk public health or safety, lead to anti-social behaviour or public nuisance or unreasonably hamper pedestrians' ability to move freely.

The Council will notify applicants of the reasons for refusal following determination. There is no statutory appeal process against a decision to refuse an application. However, the Community Safety Manager will consider any appeal submitted within 14 days of the refusal notification. Clear reasons should be given for the reasons of an appeal. The Community Safety Manager's decision is final.

## 4. **Conditions**

The Council's standard conditions are set out in Appendix 2. In some cases, extra measures may be required. This will be determined when assessing any application, on a case-by-case basis.

## 5. **Enforcement**

The Council aims to work closely with other enforcement authorities to enforce the provisions of all appropriate legislation. The case remains that an obstruction of the Highway is an offence under the Highways Act 1980 and will be dealt with by Kent County Council Highways or the police.

Obtaining a Pavement Licence does not confer the licence holder immunity in regard to other legislation that may apply, e.g. Public Liability, Health & Safety at Work, Food Hygiene and Safety and Alcohol and Entertainment Licensing, and applicants must ensure that all such permissions etc. are in place prior to operating.

If the Council considers that a licence holder has breached any condition of the licence it may:

- Revoke the licence, or
- Serve a notice on the licence holder requiring the taking of such steps to remedy the breach as specified in the notice

If the licence holder fails to comply with the terms of a notice it may revoke the licence.

The Council may also revoke a licence in the following circumstances:

- a) Where the highway is being obstructed (other than by anything permitted by the Pavement Licence)
- b) If there is anti-social behaviour or noise nuisance associated with the operation of the Pavement Licence – for example if the use of the Pavement Licence increases the amount of noise generated late at night or litter is not being cleaned up

The Council may also revoke a Pavement Licence where all or any part of the area of the highway to which the licence relates has become unsuitable for the purpose that the licence was granted. The Council will give reasons where these powers are used.

All enforcement activity will be undertaken in line with the principles set out in the Regulator's Code and the Council's Enforcement Policy.

Appendix 1

**NOTICE for display by an applicant for a Pavement Licence.**

**[Clause 2] of the Business and Planning Act 2020.**

I/We *(name of applicant)*

do hereby give notice that on *(date of application)* [I/we] have applied to Swale Borough Council for a 'Pavement Licence' at: *(postal address of premises)*

known as *(name premises known by)*

The application is for: *(brief description of application – e.g outdoor seating to the front of the premises for serving food and drink)*

Any person wishing to make representations to this application may do so by writing to: Swale Borough Council. Email: [licensing@swale.gov.uk](mailto:licensing@swale.gov.uk) or Swale Borough Council, Swale House, East Street, Sittingbourne, Kent ME10 3HT

by: *(last date for representations being the date 7 days after the date the application is submitted to the local authority (excluding public holidays))*

The application and information submitted with it can be viewed on the Council's website: [www.swale.gov.uk/licensing](http://www.swale.gov.uk/licensing)

Signed .....

Dated: *(date the notice was placed which must be the same date as the date of application)*

## Appendix 2

**PAVEMENT LICENCES CONDITIONS**

1. The Council generally will only permit Pavement licences to operate until 23:00hrs
2. It is a condition that clear routes of access along the highway must be maintained, taking into account the needs of disabled people, and the recommended minimum footway widths and distances required for access by mobility impaired and visually impaired people **(National Condition relating to clear routes of access)**
3. If barriers are to be used they must be disability compliant barriers. This means that barriers MUST:
  - (a) Be between 1000mm and 1200mm in height
  - (b) Have a continuous tapping rail (150mm to 200mm deep) or panel edge either on the ground or up to a maximum height of 200mm above the ground.
  - (c) Have a colour contrast to ensure they are highly visible.
  - (d) Be continuous around the area of tables, Chairs and temporary street furniture except for the access point
4. No tables, chairs or removable street furniture sited on a footway are to be placed within 1.2m of the edge of an adjacent carriageway. A minimum clear footway width of 1.5m must be obtained at all times and 2m in busy locations or at busy times except in the following circumstances where additional width may be required:
  - A – Proposals which place furniture within 20m of a road junction or roundabout.
  - B – Proposals which place furniture within 15m of a push button, zebra crossing or pedestrian island crossing.
  - C – Proposals which place furniture within 5m of a bus stop

**Additional widths may be required to accommodate social distancing in line with the guidance issued by the Secretary of State.**
5. Furniture should be placed so as not to obstruct driver's sightlines, or road traffic signs. Care should be taken in the use of hanging baskets, awnings, protruding umbrellas etc. Alternative items may not be used without first seeking the written authority of Swale Borough Council.
6. No apparatus such as power cables or water pipes shall be allowed to be laid across or suspended above the highway for the purposes of providing services to outside areas on or off the highway
7. Every table, chair and item of removable street furniture shall be positioned so that it does not impede the surface water drainage of the highway.
8. No wastewater or other substances shall be discharged on to the highway or highway drainage system

9. A licence holder must make reasonable provision for seating where smoking is not permitted so that customers have the option of sitting in a smoking or non-smoking area **(National Condition relating to Smoke Free Regulations)**
10. No items shall be sited as to obstruct access to any premises unless the consent of the occupier of these premises has been obtained. No items shall be sited in such a way that it obstructs any fire exits or dry risers etc.
11. No tables, chairs or removable street furniture shall be left on the highway longer than is necessary.
12. Tables, chairs and removable furniture within a pedestrianised area covered by a traffic Regulation Order shall only be placed on the highway during the hours of pedestrianisation.
13. No tables, chairs or removable street furniture shall remain on the highway pursuant to this permission after the period of this licence has expired.
14. Tables and chairs must not be placed in position outside of the permitted times stated on the licence.
15. Tables, chairs and removable street furniture shall be taken inside and stored during the hours when the business is not trading.
16. During the hours of darkness, suitable and sufficient lighting must be provided to ensure safe use of the area. Any proposals to provide additional lighting to the licensed areas must be agreed with the Highway Authority.
17. The licensee shall be responsible for keeping the designated area as shown on the submitted plan in a clean and tidy condition at all times and shall ensure that any associated debris is removed at the end of each day and make good any damage caused to the surface area.
18. The licensee is responsible for disposing of all waste from the premises and should provide sufficient refuse facilities for customers use. No waste from the premises should be put in public bins either by the owner or customer
19. In some cases, extra measures may be required. This will be determined when assessing any application, on a case by case basis.
20. The tables, chairs and removable street furniture shall be positioned in the area agreed with Swale Borough Council.
21. Any infringements of the licence or problems arising out of the use of the site must be immediately rectified to the satisfaction of Swale Borough Council, Kent County Council or the Police who reserve the right to revoke a licence without notice.
22. Swale Borough Council requires evidence that the Licence Holder has Public Liability Insurance for the operation of the Pavement Licence. This must indemnify Swale Borough Council and Kent County Council against all claims for injury, damage or loss to users of the public highway, arising from the use of the highway for the permitted purposes. The minimum level of indemnity must be £5million in respect of any one incident.

23. Permission to operate a Pavement Licence does not imply an exclusive right to the area of public highway. The licence holder must be aware that Swale Borough Council and others (e.g. police, highways authority, statutory undertakers) will need access at various times (including emergencies) for maintenance, installation, special events, improvements etc or any other reasonable cause and it is a condition of this licence to provide such access. This may mean that the pavement licence will need to cease operating and/or be removed for a period of time. On these occasions there would be no compensation for loss of business.
24. The licence must be clearly displayed on the premises with a plan of the agreed layout of the Pavement Licence.
25. There should be no external speakers, background music, recorded or live music within or into the licensed pavement area.
26. The use of the area must not create a noise nuisance to surrounding premises
27. Risk assessments must ensure that the hazard such furniture present e.g. a trip hazard is risk assessed and appropriate control measure are implemented to reduce any risks as far as is reasonably practicable

DRAFT



## Information contained within the Levelling Up and Regeneration Bill

The Bill, which is currently draft and will be debated and scrutinised by Parliament before becoming law, proposes to make the regime for Pavement Licences issued under the Business and Planning Act 2020 permanent.

Pavement Licence provisions currently permitted by the Act are currently due to expire on 30 September 2024.

The Bill proposes to make some amendments to the current provisions, which are summarised as follows:

- Amend the fee that 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 day 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 (i.e. KCC) 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 Bill
- Insert a new Enforcement schedule providing powers to the local authority to remove furniture if a premises is not abiding by its pavement licence conditions and hours

One of the current benefits of the Pavement Licence procedure is that once a licence is granted by the local authority, the premises will benefit from deemed planning permission for the street furniture for the duration of the Pavement Licence. There is no proposal to change this.

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Status of Consultee	Comments	Section of Policy	Officer Comments and Recommendations
Parish Council	<p>At their meeting on 16<sup>th</sup> March, Borden Parish Council have reviewed the attached Draft Pavement Licence Policy and have asked that I contact you with the following request;=</p> <ul style="list-style-type: none"> <li>• To include consultations with Parish Councils.</li> </ul>	3.3	<p>Comments noted.</p> <p>It is for Members of the Licensing Committee to decide whether parish councils should be included within the consultation process for Pavement Licence applications, although it should be noted that the time frame for consulting on applications is 7 days only and the application process is supposed to be 'light touch' so whether this makes the application process more complicated than necessary is open to deliberation.</p>
Kent police licensing officers	Having reviewed this, we think it would be beneficial if the police licensing team could be part of the consultation process as well as EH and ward councillors	3.3	As anti-social behaviour is a matter which can be considered as a reason for refusal or revocation of a pavement licence it is entirely appropriate for the police licensing team to be routinely consulted on licence applications.
