

Licensing Committee Meeting	
Meeting Date	19 th October 2023
Report Title	Pavement Licence Policy
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
Key Decision	No
Classification	Open
Recommendations	<ol style="list-style-type: none"> 1. That the draft Pavement Licence policy as set out in Appendix I to this report be adopted to run for a period from 1st November 2023 until 31st October 2026 2. Members to note the comments made in the evaluation grid attached as Appendix II to this report.

1 Purpose of Report and Executive Summary

1.1 At the Licensing Committee of 15th 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 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 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 4th 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 15th 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 27th February 2023 until 24th 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	<p>The Business and Planning Act 2020 gives Council the power to grant pavement licences and deal with them thereafter.</p> <p>Unlike certain licensing matters, the Licensing Committee is able to delegate the administration and decision-making process of Pavement Licence functions to officers.</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: Evaluation grid of responses received

8 Background Papers

None