

<b>Licensing Committee Meeting</b>	
<b>Meeting Date</b>	15 <sup>th</sup> February 2023
<b>Report Title</b>	Draft 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>	No
<b>Classification</b>	<b>Open</b>
<b>Recommendations</b>	<ol style="list-style-type: none"> <li>1. Members to consider a draft Pavement Licence policy for consultation and advise on any relevant amendments</li> <li>2. Members to note the consultation process as outlined and to instruct officers to proceed with the same</li> </ol>

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

- 1.1 This report provides Members with information and guidance on a draft Pavement Licence policy which requires Members comments and approval prior to public consultation.

## **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 in July 2021 the Government extended that period until 20<sup>th</sup> September 2022. On 22<sup>nd</sup> July 2022, the Government extended this provision again, extending the period during which fast track Pavement Licence provisions continue to apply until 30<sup>th</sup> September 2023.
- 2.3 The current regulations (The Business and Planning Act 2020 (Pavement Licences) (Coronavirus) (Amendment) Regulations 2022) only apply to applications made on or after 22<sup>nd</sup> July 2022. All previous licences Pavement

Licences expired on 30 September 2022 unless renewed. There are currently 17 granted licences.

- 2.4 Currently, 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 £196.
- 2.5 Members will recall that at a meeting of the Licensing Committee of 4<sup>th</sup> October 2022 approval was sought for the Community Safety Manager to be given temporary delegated authority to determine applications for Pavement Licences and to decide whether to grant or refuse them. This delegation would last as long as the temporary provision did.
- 2.6 At this meeting Members requested that a policy be developed 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.
- 2.7 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.
- 2.7 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.
- 2.8 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. 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.
- 2.9 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 Member to consider a draft Pavement Licence policy as shown as **Appendix I** for consultation and advise on any relevant amendments
- 3.2 Members to note the consultation process as outlined and to instruct officers to proceed with the same

### **4 Alternative Options**

- 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.
- 4.2 Members could consider not consulting on the proposed policy; however, this would not accord with good governance, giving interested parties an opportunity to consider the proposed policy and make any representations where they consider that changes may be made before adoption. 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 27<sup>th</sup> February 2023 until 24<sup>th</sup> April 2023. Methods of consultation will be by advertising on the Council's website and where appropriate by email and post. The results of this will then be presented to the Licensing committee with a view to being formally adopted.
- 5.2 Consultees will be the following:
  - KCC Highways Department
  - Swale BC Environmental Health Service (including environmental protection and food and safety teams)
  - Ward Councillors
  - Existing licence holders
- 5.3 All incoming responses will be entered onto a grid for consideration. The Community Safety 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 prior to formal adoption.

### **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>Application fees for Pavement Licences are capped at a maximum of £100, under section 2(1)(c) of the Business and Planning Act 2020. It has been decided to require the maximum permitted application fee of £100 for applications. Burdens Payments have also been paid to the Council by Government for the setting up and administration of Pavement Licences.</p>
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> <p>Current licences have been issued to expire on 30 September 2023 when the existing legislation is due to end.</p>
Crime and Disorder	<p>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.</p>
Environment and Climate/Ecological Emergency	<p>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.</p>
Health and Wellbeing	<p>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.</p>

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 Appendix I - Draft Swale BC Pavement Licence policy

## 8 Background Papers

None