

Arun District Council

REPORT TO:	Licensing Committee - 20 September 2024
SUBJECT:	Pavement Licensing Policy
LEAD OFFICER:	Nat Slade – Group Head of Technical Services
LEAD MEMBER:	Cllr. Blanchard-Cooper – Chair of Licensing Committee
WARDS:	All Wards
CORPORATE PRIORITY / POLICY CONTEXT / CORPORATE VISION:	
<p>Pavement licensing helps supports the business economy by providing a fast-track process to enable premises serving food and drink to seat and serve customers outdoors. Pavement licence fees have been calculated on a cost-recovery basis consistent with the council's financial strategy adopted January 2024.</p> <p>The Council's Financial Strategy 2024-2028 adopted by Full Council 10 January 2024 includes the action "maximise cost recovery" - For many services the level of fees that can be charged is limited by the principle of 'cost recovery'. A comprehensive review of all charges will ensure that any fees and charges are truly representative of the actual cost of delivering services.</p>	
DIRECTORATE POLICY CONTEXT:	
<p>The licensing service sits within the Growth Directorate. The current pavement licensing policy was adopted in 2020.</p>	
FINANCIAL SUMMARY:	
<p>The fees proposed for pavement licensing will maximise cost recovery within the maximum amount legislation permits. The current fees are set at £100, the previous legal maximum, thus have been budgeted as such.</p>	

1. PURPOSE OF REPORT

- 1.1 To provide a revised Pavement Licensing Policy and amended fees for consideration and adoption.

2. RECOMMENDATIONS

That Licensing Committee:

- 2.1 Adopt the revised Policy.
- 2.2 Delegate to the Group Head of Technical Services to make minor changes to the Policy.
- 2.3 Adopt the revised pavement licence fees.
- 2.4 Delegate to the Group Head of Technical Services to make amendments to the adopted pavement licensing fees as required and within the legal maximum.

3. EXECUTIVE SUMMARY

- 3.1 This report presents a revised Pavement Licensing Policy and revised pavement licence fees for adoption, following recent amendments to the regulations which made pavement licensing permanent and increased the maximum amount chargeable for a licence.

4. DETAIL

- 4.1 The pavement licensing regime introduced temporarily in the The Business and Planning Act 2020 provided a fast-track process to enable premises serving food and drink to seat and serve customers outdoors was introduced in 2020 to help the hospitality sector recover from the coronavirus lock down and social distancing restrictions. The regime was originally due to end on 30 September 2024.
- 4.2 On 31 March 2024 the regime was made permanent through the Levelling-up and Regeneration Act 2023, with the maximum period a pavement licence can be held extended from one to two years, and the maximum fee that can be charged increased from £100 to £500 for a new application and £350 for a renewal. The Local Authority may set its fees up to the maximum level.
- 4.3 Amendments to the legislation also introduced powers to enable the council to take enforcement action to deal with tables and chairs placed on the pavement without a pavement licence, where one is required. Formerly, action could only be taken by the Highways Authority (West Sussex County Council). Arun is now able to give notice to require furniture to be removed, and if action is not taken, to remove the furniture and recover the costs in doing so. If costs are not paid the council can sell the furniture and retain any proceeds and these would be retained to offset the costs of removing, storing and selling furniture.

- 4.4 When an application for a pavement licence is received the law requires a public consultation period and establishes a maximum period that the council has to decide whether or not to issue a licence. Under the amended legislation the consultation period has been extended from 7 days to 14 days and the period the council has to decide (after consultation), is also extended from 7 to 14 days. If the council does not make a decision within this period, then the licence is deemed to be granted, however national conditions and those adopted by the council would still apply, as would the ability to use enforcement powers.
- 4.5 A pavement licensing policy was first adopted by Arun on 20 July 2020 (Cabinet decision) after the regime was first introduced. At that time whilst the maximum fee that could legally be charged was £100, Arun initially opted not to charge. This was amended in August 2021 to £100. Further minor amendments under delegated decision were made in 2022 and 2023 to extend the termination dates for the pavement licensing regime in accordance with amendments made by Government, to extend the original temporary legislation.
- 4.6 The Policy has now been revised to bring this in line with changes to legislation which were introduced in March 2024, including making the regime permanent and increasing the maximum fees to £500 for a new application and £350 for a renewal. The amended Policy is provided in **Appendix 1** and is recommended for adoption.
- 4.7 An analysis of the time taken to administer the pavement licensing regime has been carried out and the following fees are recommended.
- New Application – 1 year - £422 (statutory maximum £500)
New Application – 2 year - £487 (statutory maximum £500)
Renewal – 1 year - £294 (statutory maximum £350)
Renewal – 2 Year - £360 reduced to £350 in line with statutory maximum.
- 4.8 The fees above are recommended to ensure cost recovery is consistent with the council's financial strategy, adopted January 2024. It is noted that there would be a subsidy to the effect of £10 for each two-year renewal application received due to the maximum statutory fee being set at £350. A breakdown of the calculations used to determine the fees is provided in **Appendix 2**.

5. CONSULTATION

- 5.1 Public consultation has not been carried out because the changes being made to the policy are primarily to ensure consistency with amended legislation. Each application however will be subject to a public consultation process and considered on its own merits.

6. OPTIONS / ALTERNATIVES CONSIDERED

- 6.1 Not to amend the Policy. The current policy is out of date due to changes in legislation which means it is potentially confusing for businesses and the public and could be open to challenge.

- 6.2 Not to amend the pavement licensing fees. The current charge of £100 means a significant subsidy by the council which is inconsistent with the adopted financial strategy. These licenses were originally offered free to encourage uptake by businesses following coronavirus lockdown. The fees recommended are based on the costs to the council of administering the pavement licensing regime.

7. COMMENTS BY THE GROUP HEAD OF FINANCE/SECTION 151 OFFICER

- 7.1 The fees proposed within the body of this report are based on full cost recovery, albeit within a statutory cap. This moves away from the subsidised rates during the pandemic and the significant subsidy currently made by the Council in administering this licensing regime. The proposed fees also support the Council's Financial Strategy as presented to the Special Policy and Finance Committee on 8 January 2024. The Council's financial position, including a £4.3m use of reserves in 2023/24 to bridge the budgetary funding gap, therefore reduction in fees would increase the pressures in meeting current year budgets, that require a reserve contribution of £3.7m.

8. RISK ASSESSMENT CONSIDERATIONS

- 8.1 Council policies must be consistent with legislation and relevant guidance. An outdated Policy may create confusion for the public and be subject to legal challenge.
- 8.2 Fees must be set at an appropriate level and the council is not permitted to make a profit or they may be subject to challenge. Reducing the recommended fees would be inconsistent with council's adopted financial strategy (January 2024) which refers to maximising cost recovery.

9. COMMENTS OF THE GROUP HEAD OF LAW AND GOVERNANCE & MONITORING OFFICER

- 9.1. The grant of a pavement licence only permits the placing of furniture on the highway. A pavement licence does not negate the need to obtain approvals under other regulatory frameworks, such as the need for a licence to sell alcohol, and the need to comply with registration and hygiene requirements for food businesses.
- 9.2. The legislative framework has already been outlined at paragraph 4 above.
- 9.3. On 2 April 2024, the Pavement licences guidance was published by central government to assist with the introduction of the new licensing regime.
- 9.4. There is no statutory appeal process against decision to refuse an application. At paragraph 3.9 of the Draft Policy to be adopted, any appeal made to a refusal, will be considered by a manager within Environmental Health and may be referred to the licensing sub-committee at their discretion.

9.5. Enforcement Notices can be served where furniture is set on the pavement without authorisation and the Council is now able to recover and dispose of the furniture if not claimed by the licence holder. This does not directly provide for prosecutions. Section 6(1) of the Business and Planning Act 2020 however also provides for the revocation of the Pavement Licence if the Council considers the licence holder has breached any conditions of the licence, which is another useful deterrent.

9.6. The Business and Planning Act 2020 sets out two conditions which continue to apply to pavement licences which are granted or deemed to be granted; these are: a no-obstruction condition and a smoke-free seating condition. These apply only to licences granted under the Business and Planning Act 2020, not existing licences permitted under Part 7A of the Highways Act 1980, or other relevant legislation.

10. HUMAN RESOURCES IMPACT

10.1 There are no direct human resource impacts from the proposals in this report.

11. HEALTH & SAFETY IMPACT

11.1 There are no direct health and safety impacts from the proposals in this report. Each application is subject to consultation with Environmental Health which should ensure any potential health and safety concerns are identified.

12. PROPERTY & ESTATES IMPACT

12.1 There are no direct Property and Estates impacts from the proposals in this report.

13. EQUALITIES IMPACT ASSESSMENT (EIA) / SOCIAL VALUE

13.1 An equalities impact assessment has been carried out and is provided at Appendix 3. Fees are set based on the costs of providing the service and the costs are the same irrespective of the size of the business and number of table and chairs proposed to be placed on the pavement. The legislation and proposed Policy ensure a no obstruction condition is included on every licence and pavements which don't meet minimum width requirements (2m wide walkway maintained clear of obstruction) will not be supported.

13.2 Pavement licensing provides a low cost fast-track process to enable food and drink premises to seat and serve customers using pavements and has a positive social value. Checks and balances are carried out as part of the statutory consultation process and powers are available to deal with any licence holders that cause unreasonable impacts and to remove tables and chairs.

13.3 Local authorities must have regard to the Public Sector Equality Duty, under the Equality Act 2010 when devising and implementing the new licensing regime, which includes the need to have due regard to eliminate discrimination, harassment, victimisation, and any other conduct that is prohibited by or under the Act. Any businesses which apply for a pavement licence will also need to have regard to their own duties under the Equality Act 2010, such as their duty under section 29 of the Act not to discriminate in providing their service and the duty to make reasonable adjustments.

14. CLIMATE CHANGE & ENVIRONMENTAL IMPACT/SOCIAL VALUE

14.1 No direct climate change impacts have been identified. Patio heaters are not permitted to be used in conjunction with a pavement licence issued by the council.

15. CRIME AND DISORDER REDUCTION IMPACT

15.1 Whilst there is potential for crime and disorder impacts in terms of noise, public nuisance and litter, this has not been a significant concern with pavement licences to date. Stakeholders will nonetheless be consulted on pavement licences including, Environmental Health, Sussex Police and the relevant town or parish council. Any adverse comments received may lead to a licence being refused or additional conditions and restrictions placed on the licence holder. The council can also revoke a licence should there be evidence of anti-social behaviour or public nuisance. Licences will not generally be approved beyond 9pm.

16. HUMAN RIGHTS IMPACT

16.1 There are no direct human rights impacts from the proposals in this report.

17. FREEDOM OF INFORMATION / DATA PROTECTION CONSIDERATIONS

17.1 There are no direct freedom of information or data protection impacts from the proposals in this report. A public register will be maintained showing all applications received and placed on consultation, and licences issued.

CONTACT OFFICER:

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BACKGROUND DOCUMENTS:

Appendix 1 – Amended Pavement Licensing Policy

Appendix 2 – Pavement Licensing Fee Calculations

Appendix 3 – Equality Impact Assessment

Financial Strategy 2024-2028 Adopted by Full Council 10 January 2024

Current Pavement licensing policy | Arun District Council

Pavement licences: guidance - GOV.UK (www.gov.uk)

Public Register - Licensing