

Crawley Borough Council

Report to Licensing Committee

18 June 2024

Pavement Licence Policy – Applications, Fees and Enforcement Business and Planning Act 2020 as amended by the Levelling- Up and Regeneration Act 2023

Report of the Head of Community Services – **HCS/081**

1. Purpose

- 1.1. The Council has been responsible since 2020 on a temporary basis for the processing and determination of applications for Pavement Licences under the Business and Planning Act 2020. This process has very recently become a permanent licensing function of the Council. The application process for a Pavement Licence is enshrined and broadly prescribed in legislation, however there are elements within the process which the Council may determine locally, this includes the setting of application fees, the period of time that a licence will have effect and conditions appended to licences which must be complied with.

2. Recommendation

- 2.1. That the Licensing Committee:
- a) Adopts the suggested fee structure as included at **Appendix B** with immediate effect, and for any subsequent revisions to fees be delegated to the Head of Community Services in conjunction with the Portfolio Holder and Chair of Licensing Committee.
 - b) Agrees that where it is appropriate to grant a Pavement Licence, that it is ordinarily granted for a period of two years.
 - c) Amends the Pavement Licence Policy as included at **Appendix A**.

3. Reasons for the Recommendations

- 3.1. The Licensing Service has historically avoided drawing on its general funds for administration of its licensing regimes and endeavoured recover costs via fees as much as possible. The current fee structure, previously determined by Central Government, does not fully meet the costs associated with delivery of the service.

4. Background & Issue to be Resolved

- 4.1. In order to place objects or structures on the highway (these are those listed in Section 115A(1) Highways Act 1980), historically, applications had to be submitted to West Sussex County Council under Part 7A of the Highways Act 1980. The fees charged for this process varied between local authorities and there was also a 28-calendar day consultation period. The most

recent charge, in 2022, for a Tables and Chairs Licence, set by West Sussex County Council appears to have been £520.00 for a 1 year licence according to historical records.

- 4.2. As a direct response to the Covid-19 Pandemic, a range of measures to help businesses recover, including new ways of working arising from the disruption caused by the pandemic, were introduced by the Business and Planning Act 2020 (the '2020 Act') which received Royal Assent on 22nd July 2020 and moved the responsibility of administering and regulating the regime to local authorities.
- 4.3. The various measures contained within the 2020 Act supported the transition from immediate crisis response and lockdown measures arising from the Pandemic, toward economic recovery. The measures implemented, including the use of outside areas as part of business operations, allowed businesses to implement safer ways of working to manage the then ongoing risks from Covid-19, in particular the need for social distancing.
- 4.4. Part 1 of the 2020 Act introduced a new but temporary, fast-track application process for a Pavement Licence and for the administration to move to district councils. Compared to applications made under Part 7A of the Highways Act 1980 when under the jurisdiction of West Sussex County Council, under Crawley Borough Council, a Pavement Licence application under the 2020 Act is a cheaper, easier, and quicker way for businesses such as cafes, restaurants and bars to secure a licence to place removable furniture (e.g. counters or stalls for selling or serving food, tables, shelves on which food or drink can be placed, chairs, benches, umbrellas, barriers etc.) on the highway. Furniture is required to be removable and related to the serving, sale and consumption of food or drink. In principle, this means it is not a permanent fixed structure, and is able to be moved easily, and stored elsewhere after the end time of the licence.
- 4.5. Advertising boards are not included in the definition of furniture within the pavement licensing regime. As well as needing consent under the Highways Act 1980, advertising boards also require express advertising consent under the Town and Country Planning (Control of Advertisements) Regulations 2007.
- 4.6. Applicants that wish to place non-removable furniture onto the highway must apply for permission under the Highways Act 1980.
- 4.7. In all cases the application for a Pavement Licence must be made for a 'prescribed purpose', this includes either use of the furniture by the licence-holder to sell or serve food or drink supplied from, or in connection with a 'relevant use' of, the premises, or use of the furniture by other persons for the purpose of consuming food or drink supplied from, or in connection with a 'relevant use' of, the premises. 'Relevant use' means use as a public house, bar or other drinking establishment, or other use for the sale of food or drink for consumption on or off the premises.
- 4.8. As originally enacted, under the 2020 Act it was initially only possible to grant a Pavement Licence up to and including the 30th September 2021. However due to the continuation of the Covid-19 Pandemic, Central Government extended the legislation, albeit on a temporary basis until March 2024.
- 4.9. However, as a result of Section 229 and Schedule 22 of The Levelling Up and Regeneration Act 2023 (the '2023 Act') coming into effect on the 31st March 2024, responsibility for Pavement Licences became a permanent licensing function of District and Borough Councils.

- 4.10. 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 including where such uses form an ancillary aspect of another use, for example supermarkets, or entertainment venues which sell food and drink.
- 4.11. A licence permits the 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.
- 4.12. Businesses that do not use their premises for the sale of food or drink for consumption, for example hair salons, are ineligible. Though they can apply for permission to place furniture on the pavement under the Highways Act 1980 or other relevant legislation.
- 4.13. Furniture that is not removable and used in connection with the outdoor selling or consumption of food or drink are not permitted by a pavement licence. Advertising boards are not included in the definition of furniture within the pavement licensing regime. As well as needing consent under the Highways Act 1980, advertising boards also require express advertising consent under the Town and Country Planning Regulations 2007. Applicants that wish to place non-removable furniture onto the highway must apply for permission under Licences can only be granted in respect of highways listed in section 115A(1) Highways Act 1980. Generally, these are footways 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).
- 4.14. A pavement licence does not grant the right to permanently close a road. To do so, a pedestrian planning order made under section 249(2) or 249(2A) of the Town and Country Planning Act 1990, extinguishing the right to use vehicles on the highway, is required.
- 4.15. The 2020 Act and 2023 Act prescribe the overall statutory framework and the processes that must be followed when applying for, processing, or enforcing a Pavement Licence matter. A summary of the key steps in the application process is outlined below.

Application – An application must be made in writing and in such form as the Council may specify (currently online). It must include certain information such as specifying the premises and the part of the relevant highway to which the application relates. It must include measurements of the proposed area, the days of the week and times when furniture is proposed to be sited, a description of the furniture proposed to be sited and the method by which the area will be delineated, including images of items.

Supporting Documentation – A current Public Liability Insurance Certificate confirming that at least £5 million of cover is in place. In addition, the Council requires that a plan clearly delineating the extent of the proposed licensed area is provided, and includes any proposed layout and structures be noted on the plan.

Fee – The maximum fee that originally could be charged was £100.00 which was set by Central Government.

However, since the 31st March 2024, it has been permissible to charge up to £350.00 for a renewal application and £500.00 for a new application in respect of a Pavement Licence. Proposed new fees are placed before this Committee for consideration.

Publishing/ Advertising – It is a requirement that the Council publishes the application to

advise interested parties. The Council publishes applications online by way of our Public Register, which also enables representations to be submitted online. Representations are also received via email.

All applicants are also required to advertise their application by way of a notice that must be prominently displayed at the premises where it can be clearly seen and to which the application relates for a period of 14 days (previously 7 days before the 2023 Act).

Consultation/Representations – The consultation period is 14 days. It is a statutory requirement that the Council specifically consults with the Highways Authority and such other persons as it considers appropriate. This Council not only consults with Highways at West Sussex County Council, but notifies elected CBC Members, CBC departments (Development Control, Economic Development and Environmental Services), Sussex Police, and Business Fire Safety at West Sussex Fire and Rescue Service.

Determination – The determination period is 14 days (previously 7 days before the 2023 Act) and it is now the case that a Pavement Licence may be granted for a maximum period of 2 years, whereas previously licences were issued for 1 year only.

Once the information is submitted to the Council, the Authority has 28 days from the day after the application is made (excluding public holidays) to consult on and determine the application. This consists of 14 calendar days for public consultation, and then 14 calendar days to consider and determine the application after the consultation. (Prior to the 2023 Act, the consultation and determination completed after 14 days.)

Licences are not transferrable between parties and if a new occupier of a premises takes control, a new licence application is required. Fees are also not refundable. The current fee for 1 year is £100.

Conditions - When granting a Pavement Licence, it is a requirement that two mandatory national conditions must apply, the first is a no-obstruction condition (this includes the requirement to have regards to the needs of disabled persons) and the second relates to the provision of smoke-free seating within the licensed area. Further information can be found within the revised draft Pavement Licence Policy appended to this report at **Appendix A**

In addition, a Pavement Licence may be granted subject to any other conditions as the Council considers reasonable.

5. Current Policy and Regulation

- 5.1. In 2020 in response to the new legislation that was issued during the Covid-19 Pandemic, and at pace, Officers developed and published the current Pavement Licence Policy and current set of conditions which are available here: [current Crawley Borough Council Pavement Licence Policy](#).
- 5.2. Officers consider that the current conditions are balanced, proportionate and have achieved the difficult position of allowing businesses to commercially benefit from use of the public highway, whilst ensuring that such use does not have a detrimental effect on residents, businesses or those visit Crawley. Where a pavement licence is granted, clear access routes on the highway will need to be maintained, taking into account the needs of all users, including disabled people.
- 5.3. There are some proposed revisions to the Pavement Licence Policy in terms of content and

conditions as follows to reflect the changes in law, operational practice and local factors. For ease of reference, a table outlining significant changes is included at **Appendix E** (the proposed draft Policy is included at **Appendix A**). In summary these include:

- Additional information regarding the provision of an outside smoking area and the prohibition of smoking in enclosed or substantially enclosed spaces.
- Reinforcement of mandatory conditions
- Additional conditions and revisions to conditions regarding the placement of articles on the Highway, including matters concerning public safety.
- Other than those already in place by virtue of the 2020 Act (but removed at the end of each trading day), that marquees and gazebos or similar structures will not be permitted on the Highway.

5.4. A summary of the proposed revisions when compared to the current Policy, if approved, will be included in the wider Policy document at Appendix 5.

5.5. Since 31 March 2024, the Council has been given responsibility for taking enforcement action where a person puts removable furniture on a relevant Highway and is not authorised to do so. Where such a situation arises, the Council may by notice require the person to remove the furniture before a date specified in the Notice, and to refrain from putting furniture on the Highway unless authorised to do so. If a person leaves or puts removable furniture on the relevant Highway in contravention of the Notice, the Council may:

- a) remove the furniture and store it
- b) require the person to pay the authority's reasonable costs in removing and storing the furniture, and
- c) refuse to return the furniture until those reasonable costs are paid. If within the period of three months beginning with the day on which the notice is given the person does not pay the reasonable costs, or does not recover the furniture, the Council may (d) dispose of the furniture by sale or in any other way it thinks fit, and
- d) retain any proceeds of sale for any purpose it thinks fit

5.6. The legislation also affords the Council powers to cancel or amend licences in specific circumstances.

6. Licence Duration and Fees

6.1. Whilst much of the process that must be followed is prescribed in legislation, there are elements which must be determined locally. These relate to fee setting for both renewal and new applications as well as determining the period a Pavement Licence may be granted. The maximum duration under the 2023 Act is 2 years. Previously, the maximum duration was 1 year and a fee, previously set by Central Government, of £100. This fee is non-refundable, and it is proposed that this remains the case in respect of any new fees determined by the Committee. The current fee of £100 does not currently reflect the cost of providing the service, and "new burdens" funding was provided to local authorities in previous years to offset the costs of implementing the new regime under the 2020 Act. In setting new maximum fee levels, there is recognition by Central Government of the permanence of the pavement licence regime, further, that fees need to increase to cover the ongoing cost of administering the Service. Revisions under the 2023 Act allow Authorities to charge up to £500 for a new pavement licence application or £350 for a renewal.

6.2. Currently 21 Pavement Licences have effect in relation to premises within the Borough, all of

these are located in Crawley. These are due to expire at the end of the 30th September 2024. Of these, the majority are held either directly by owners or franchisees of well-known high street businesses and others by independent traders. The vast majority of Pavement Licences have been issued in respect of alcohol licensed premises.

- 6.3. Of note and interest is that premises licence fees issued in connection with the sale and supply of alcohol under the Licensing Act 2003 have remained the same since 2005, despite local authorities lobbying for these to be increased to reflect the cost of administering the service. The pavement licensing regime is separate to this, but in the vast majority of licences issued have been in connection with a premises already licensed to sell alcohol under the Licensing Act 2003.
- 6.4. There is some misunderstanding in the community as some people believe that all forms of street furniture may be placed on the public highway without a licence, and so work continues to educate traders and encourage applications for licences where not in place. West Sussex County Council will not issue any further Tables and Chairs Licences and will direct potential applicants to Crawley Borough Council.
- 6.5. In addition, where West Sussex County Council receive a complaint concerning furniture placed on the Highway, whether licensed or not, they are expected to refer the complaint to the Council's Licensing Team to investigate, and if necessary, ensure that the furniture is removed or, where appropriate, a Pavement Licence secured. It is anticipated that Licensing Officers will be required to carry out enforcement activity.
- 6.6. Application fees need to cover a range of functions including:
 - Advising on applications (all types)
 - Initial scrutiny and consideration of the application by officers.
 - The processing of an application, updating systems and liaising with applicants in case of omissions and errors.
 - Consultation and any associated feedback, including where representations are made.
 - Visiting site to check compliance with legislation, advertising and notice display, proposed site and furniture suitability.
 - Regulatory and enforcement checks to ensure compliance with the legislation, Council Policy and Licence conditions.
- 6.7. Given the level of work involved in the consideration and determination of applications, it is proposed that fees are set at the permitted maximum level of £350.00 for a renewal application and £500.00 for a new application, however that licences are granted for the maximum period of 2 years to ease the administrative burden on both business operators and the Council as the Licensing Authority.
- 6.8. A breakdown of costs associated with the service are included at **Appendix B** and the fees being charged by other neighbouring authorities is included at **Appendix C**, with several yet to determine a final fee structure.
- 6.9. This approach ensures that not only so far as is reasonably practicable, income is generated to cover the cost of providing the service, but it also gives Operators commercial certainty in terms of knowing that they have a licence for a significant period of time.
- 6.10. The Licensing Service has historically avoided drawing on its general funds for administration of its licensing regimes and endeavoured recover costs via fees as much as possible. The current fee structure, previously determined by Central Government, does not fully meet the

costs associated with delivery of the service. Income and expenditure can be reviewed over coming years and an adjustment made if necessary. It is also important to note that historical records indicate that West Sussex County Council were charging £520 a 1-year Tables and Chairs Licence in 2022. By comparison, if the fee for renewal is agreed as £350, this equates to £175 per annum for a 2-year licence, and £250 per annum for a new licence if the fee is set at £500.

7. Description of Issue to be Resolved

- 7.1. The Council needs to comply with its statutory duty to administer and enforce the various statutory requirements contained within the Business and Planning Act 2020 as amended by the Levelling-up and Regeneration Act 2023.
- 7.2. It is important to ensure that the placing of furniture on the Public Highway is undertaken in a safe and controlled manner. This supports not only those operating local businesses to ensure they can maintain a diverse, sustainable and profitable business, but also that those living, working or visiting the Borough are not adversely affected by the placement of articles nor the operation of areas issued with a Pavement Licence. This is particularly relevant to those with disabilities using areas of Public Highway as they are at greater risk of an adverse impact.
- 7.3. As a service that seeks to cover its costs and not draw on general funds , it is important to ensure that the various fees associated with the administration and enforcement of the Pavement Licence regime are set at the appropriate level, this being that the reasonable costs of providing the service are fully recovered.
- 7.4. It is therefore recommended that the fee levels are set as follows for a 2-year licence (maximum duration permitted).
- 7.5. Licences are not transferrable and application fees will not be refunded if an application is refused, deemed invalid or withdrawn and the onus to apply/renew licences remains with the applicant, albeit the Authority will send correspondence to licence holders prior to renewal to facilitate the process.

- New Pavement Licence application £500
- Renewal of Pavement Licence application £350

8. Staffing, Equalities, Financial, and Legal Implications

- 8.1. It is likely that there will be increased demand on the Licensing Service as a result of the regulatory and enforcement requirements brought about by the Pavement Licence regime. The Service has sought to be self-financing to avoid drawing on the Council's general funds. Before the pavement licensing regime was made permanent, Crawley Borough Council, in common with all other Councils was able to secure some "New Burdens" funding from central government to assist with the implementation, administration and regulation arising from the newly created provisions.
- 8.2. Existing staff within the Licensing Team will be responsible for the administration and enforcement of the various provisions. However, depending on the level of demand, resourcing will therefore need to be kept under review and may need adjustment dependant upon how many applications or enforcement issues arise. Significant work has already been undertaken by the Licensing Team to secure compliance amongst eligible businesses, but work continues.

- 8.3. Restaurants, cafes, bars and other premises benefitting from a Pavement Licence are an important part of the Boroughs hospitality offering. However, the cost of providing the Pavement Licence function must be paid for by the service user and not be subsidised by other Council funds.
- 8.4. The Council would be at risk of potential legal challenge regarding any matters pertaining to the 2020 and 2023 Acts without a Policy being in place and would not be able to charge a fee unless it had been properly determined by the Licensing Committee in accordance with the Council's Constitution.
- 8.5. Councillors must ensure that they exercise their decision-making powers in a manner which is compliant with the Human Rights Act 1998, and the principles of natural justice.
- 8.6. The Crime and Disorder Act 1998 (CDA) established that the responsibility of reducing crime does not fall solely to the police. Section 17 of the CDA requires local authorities to consider the crime and disorder implications of all their activities and functions and do all that they reasonably can to reduce these problems. It states as follows:
1. Without prejudice to any other obligation imposed on it, it shall be the duty of each authority to which this section applies to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent;
 - a. Crime and disorder in its area (including anti-social and other behaviour adversely affecting the local environment, and
 - b. The misuse of drugs, alcohol and other substances in its area, and
 - c. Re-offending in its area.
- 1A1A)The duty imposed on an authority by subsection (1) to do all it reasonably can to prevent serious violence in its area is a duty on the authority to do all it reasonably can to—
 - (a)prevent people from becoming involved in serious violence in its area, and
 - (b)reduce instances of serious violence in its area.
- 8.7. Pursuant to Section 149 of the Equality Act 2010, the Council when making decisions must have regard to the 'Public Sector equality duty'. In summary, this means that the Council must, in the exercise of its functions, have due regard to the need to-
- a) Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act.
 - b) Advance equality of opportunity between persons who have a relevant protected characteristic and persons who do not share it.
 - c) Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- 8.8. The characteristics protected by the Equality Act are:
- age
 - disability
 - gender reassignment marriage/civil partnership pregnancy/maternity race

- religion/belief
- gender and sexual orientation

8.9. An Equality Impact Assessment is included at **Appendix D**.

Are there any implications for the following?		
	Yes	No
Crime and Disorder	✓ As the Council now has an enforcement responsibility in respect of persons placing furniture on the highway without a licence, a number of enforcement cases might now be referred to us which will need to be appropriately dealt with so as to ensure compliance with legal requirements	
Biodiversity and Climate Change Mitigation		✓
Human Rights and Equality Impact.	✓ See Equalities Impact Assessment	
Safeguarding and Early Help		✓
General Data Protection Regulations (GDPR)		✓
Health and Wellbeing		✓
Other (please specify)	✓ As outlined in the report, there is potential increased risk to disabled pedestrians from the placing of furniture on the highway. However, no complaints or reports of incidents involving disabled persons has been reported to the council since the introduction of Pavement Licences in 2020.	

9. Background Papers

[Business and Planning Act 2020](#)

[Department for Levelling Up, Housing and Communities Pavement Licences: guidance, published 2 April 2024](#)

[Pavement licences: guidance](#)

[Letter dated 2 April 2024 from Department for Levelling Up, Housing & Communities sent to all Council Leaders and Chief Executives of English local planning authorities](#)

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