

LICENSING AND REGULATION COMMITTEE
14 October 2024

PART 1 – PUBLIC DOCUMENT

TITLE OF REPORT: **ADOPTION OF A PAVEMENT LICENSING POLICY**

REPORT OF: **THE LICENSING AND COMMUNITY SAFETY MANAGER**

EXECUTIVE MEMBER: **HOUSING AND ENVIRONMENTAL HEALTH**

COUNCIL PRIORITIES: **PEOPLE FIRST, SUSTAINABILITY, A BRIGHTER FUTURE TOGETHER**

1. EXECUTIVE SUMMARY

The purpose of this report is to adopt a licensing policy for pavement licences, following the previous temporary licensing arrangements being permanently enacted into legislation.

2. RECOMMENDATIONS

- 2.1. That the Committee be recommended to adopt the Pavement Licensing Policy attached as Appendix A.

3. REASONS FOR RECOMMENDATIONS

- 3.1 The previous temporary licensing arrangements worked well therefore no further amendments are required, other than some clarification of previous condition wording.
- 3.2 The adoption of a policy ensures that applicants, licence holders, and the public have a clear understanding of the licensing process and objectives; it also ensures a consistent and transparent approach.

4. ALTERNATIVE OPTIONS CONSIDERED

- 4.1 No alternative options were considered as the previous temporary arrangements allowed all applications to be granted without unfair burden on businesses, whilst ensuring that pedestrians were not inconvenienced by additional street furniture.
- 4.2 All licensing policies are subject to regular review and this policy can be reviewed at the appropriate time to ensure it remains fit for purpose.

5. CONSULTATION WITH RELEVANT MEMBERS AND EXTERNAL ORGANISATIONS

- 5.1 No consultation has been undertaken with Members, it is the committee's role to consider the appropriateness of the proposed policy.

- 5.2 No public consultation was undertaken as the proposed policy document does not change the current conditions applied to all existing pavement licences issued under the temporary arrangements and will place no additional burden on them.
- 5.3 The policy includes provisions for public consultation regarding any future changes to the policy if it is determined appropriate to review standards in the future.

6. FORWARD PLAN

- 6.1 This report does not contain a recommendation on a key Executive decision and has therefore not been referred to in the Forward Plan.

7. BACKGROUND

- 7.1 Pavement licences were first introduced as a temporary measure under the Business and Planning Act 2020 to promote economic recovery and growth in response to the economic impacts of the global Covid-19 pandemic. The temporary measures assisted businesses by introducing a reduced consultation and determination period, plus capped local fees, circumventing the historically longer and more expensive process under the Highways Act 1980.
- 7.2 The temporary arrangements were extended annually by Government to allow businesses to recover from the pandemic.
- 7.3 The Levelling Up and Regeneration Act 2023 subsequently made the temporary legislation permanent, but with some enhancements. The key features of the Business and Planning Act 2020 are retained but changes include an increase in the fee cap, provision that licences can be issued for up to two years, increased consultation and determination times, provision for a renewal process, and enforcement powers for local authorities.
- 7.4 There are national conditions relating to non-obstruction of footways and local authorities can determine their own local conditions.
- 7.5 This policy has regard to the Guidance issued by the Department for Housing, Local Government and Communities dated 2 April 2024.

8. RELEVANT CONSIDERATIONS

- 8.1. The local conditions imposed on licences under the temporary arrangements worked well and ensured a balance between aiding business recovery and ensuring footways remained unobstructed.
- 8.2 The conditions had been compared to other local authorities and were consistent with other local authorities. For that reason, no significant amendments are proposed.
- 8.3 The proposed policy deals with the new legislative powers available to the council and clearly sets out the process and timescales for applicants. It also sets out the proposed use of new enforcement powers.

- 8.4 Although the legislation does not provide an appeal to the courts, it is felt that best practice would allow for an internal appeal in cases where it is claimed that policy has not been correctly applied or where a decision seems unreasonable.
- 8.5 For that reason, the licensing team leader has been delegated powers to determine pavement licence applications as the officer responsible for day-to-day operational matters. An internal appeal is available to the licensing and community safety manager who can undertake an independent review of a decision having not been involved in the original decision.
- 8.6 The Service Director – Housing and Environmental Health has delegated powers to set the new pavement licence fees as part of the annual fee setting process in consultation with the Executive Member for Housing and Environmental Health.

9. LEGAL IMPLICATIONS

- 9.1. Section 8.2.3 states that the Licensing and Regulation Committee shall meet at least once per civic year:
- (a) ***to consider all licensing matters with the exception of the statements of licensing policy under the Licensing Act 2003 and the Gambling Act 2005 and those matters delegated to the Licensing Sub-Committee and the Service Director: Housing and Environmental Health***
 - (c) ***to consider and amend other non-executive licensing policies (minor amendments to be delegated to the Licensing Manager in consultation with the Chair of Committee and the relevant Executive Member).***
- 9.2 Schedule 1 of the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (as amended) lists *functions relating to pavement licences* as a function not to be the responsibility of an authority's executive.
- 9.3 The adoption of a pavement licensing policy is not an executive function, nor is it delegated to a licensing sub-committee or the relevant service director, therefore falls within the remit of the Licensing and Regulation Committee.
- 9.4 Whilst the policy proposes no significant change to the current administrative practices under the previous temporary arrangements, no formal policy exists, therefore this would not fall under the definition of a minor amendment for officers in consultation with the Chair and Executive Member.

10. FINANCIAL IMPLICATIONS

- 10.1 There are no financial implications arising from the adoption of this policy as it places no additional administrative or enforcement burdens on the Council.
- 10.2 Legislation permits the Council to recover its reasonable costs of administration and enforcement of the pavement licensing regime through licence fees, subject to a national maximum fee limit. Costings have proven that the reasonable costs of administration and enforcement can be covered by a fee less than the maximum cap.

- 10.3 Licence fees are set annually in accordance with the Medium-Term Financial Strategy and a resolution of the Licensing and Appeals Committee held on 12 December 2013.

11. RISK IMPLICATIONS

- 11.1 The provision of a robust, transparent policy will help mitigate the risk of formal complaints.

12. EQUALITIES IMPLICATIONS

- 12.1. In line with the Public Sector Equality Duty, public bodies must, in the exercise of their functions, give due regard to the need to eliminate discrimination, harassment, victimisation, to advance equality of opportunity and foster good relations between those who share a protected characteristic and those who do not.

- 12.2. The policy requires applicants to ensure that there is no obstruction of the footway, and that consideration should be given to persons with disabilities. There is a standard condition C14 that states:

In ensuring compliance with (a) above, the licence holder must have particular regard to the needs of disabled persons, in particular:

(e) ensuring a minimum clear space of 1500mm between any obstacle and the edge of the footway,

(f) any tables and chairs, and/or other objects, placed on the highway should not prevent or discourage disabled persons, older persons or those with mobility needs from using the footway,

(g) any barrier around an area permitted under the licence should be such that it is easily navigable by a visually impaired person, and

(h) any tables and chairs, and/or other objects, placed on the highway should be of reasonable substance such that it cannot be easily pushed or blown over by the wind causing further obstruction.

13. SOCIAL VALUE IMPLICATIONS

- 13.1. The Social Value Act and “go local” requirements do not apply to this report.

14. ENVIRONMENTAL IMPLICATIONS

- 14.1. There are no known environmental impacts or requirements that apply to the adoption of this policy.

15. HUMAN RESOURCE IMPLICATIONS

- 15.1 There are no human resource implications arising from the adoption of this policy as it places no additional administrative or enforcement burdens on the Council.

16. APPENDICES

- 16.1 Appendix A Proposed pavement licensing policy

17. CONTACT OFFICERS

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18. BACKGROUND PAPERS

18.1 None