

LICENSING AND REGISTRATION COMMITTEE

2 OCTOBER 2024

REPORT OF THE ASSISTANT DIRECTOR - GOVERNANCE

A4. PAVEMENT LICENSING POLICY

PART 1 – KEY INFORMATION

PURPOSE OF THE REPORT

This report is submitted to the Committee to enable it to consider the Pavement Licensing Policy following a 5-week period of consultation on a draft revised policy. This report sets out the proposed revised policy to be adopted and the outcome of the consultation.

EXECUTIVE SUMMARY

Under the Business and Planning Act 2020, pavement licensing became a function of the Council (as the Licensing Authority) on a temporary basis as part of the recovery provisions following the Covid pandemic. The Levelling Up and Regeneration Act 2023 has now become legislation which supersedes the Business and Planning Act 2020 and includes amended provisions for pavement licences.

The temporary legislation position in the 2020 Act and was due to expire at the end of September 2024, however, the last Government made the scheme permanent, with some amendments, through the Levelling Up & Regeneration Act which received royal assent last year and came into force on Sunday 31 March 2024.

The Licensing and Registration Committee at its meeting on 24 July 2024 agreed to undertake public consultation on the draft policy.

RECOMMENDATION(S)

- (1) It is recommended that the Committee receive and considers the outcome of the public consultation on a draft Pavement Licensing Policy and then determine whether to recommend the policy attached to this report to Cabinet for adoption; and**
- (2) That, on the basis (1) above is approved, Officers be authorised to make minor amendments to the policy to ensure that it reflects operational positions of the Council and legislative / case law relevant to the policy.**

REASON(S) FOR THE RECOMMENDATION(S)

New legislation has come into force on 31 March 2024 to make changes to the temporary pavement licensing regime introduced under the Business & Planning Act 2020 and has introduced changes including a new capped level fee structure for new and renewal applications.

PART 2 – IMPLICATIONS OF THE DECISION

DELIVERING PRIORITIES

The draft revised Policy set out at Appendix A is intended to support the following themes from the Council’s Corporate Plan 2024-28:

- Pride in our area and services to residents
- Working with Partners to improve quality of life
- Promoting our Heritage offer, attracting visitors and encouraging them to stay longer

LEGAL REQUIREMENTS (including legislation & constitutional powers)

Legislation for Pavement Licensing is set out within the background part of the report.

FINANCE AND OTHER RESOURCE IMPLICATIONS

There are resource implication in administering the pavement licensing regime which include advice, administration, compliance and enforcement. There are staff costs associated to this. These elements were taken into account when the Committee determined the fees to be charged earlier in the year.

The Act stipulates that an application must be sent to the Licensing Authority using electronic communications in such a manner as the authority may specify, and be accompanied by such fee not exceeding £500 as the authority may require. An online portal has been developed for this purpose, to enable applicants to complete all of the application questions, upload the relevant documents and make payment in a streamlined manner. This will ensure that staff are managing applications in the most efficient way without the need for constant follow-up queries.

The new provisions within the Levelling Up and Regeneration Act 2023 introduced a power for the Council to remove, store and ultimately dispose of furniture in prescribed circumstances. This will be a cost to the Council but the Act allows for full recovery of those costs from the licence holder.

USE OF RESOURCES AND VALUE FOR MONEY

A) Financial sustainability: how the body plans and manages its resources to ensure it can continue to deliver its services;	The policy does not, in itself, directly impact on financial sustainability.
B) Governance: how the body ensures that it makes informed decisions and properly manages its risks, including; and	The policy directly seeks to support consistency in good decision making.
C) Improving economy, efficiency and effectiveness: how the body uses information about its costs and performance to improve the way it manages and delivers its services.	The implementation of the policy will be reviewed to ensure it can be delivered in a way that supports economic, efficient and effective delivery of services.

MILESTONES AND DELIVERY

Subject to the decision of the Committee, Cabinet will then consider adoption of the proposed policy.

The adoption of the Pavement Licensing Policy this financial year is itself a key milestone in keeping licensing policies up to date.

ASSOCIATED RISKS AND MITIGATION

The principal risks this policy seeks to address are those around supporting good decision making.

OUTCOME OF CONSULTATION AND ENGAGEMENT

The draft Pavement Licensing Policy submitted to the Committee at its meeting of 24 July 2024 was subject to public consultation and scrutiny for a period of 5 weeks from 30 July 2024 to 3 September 2024.

A page was created for the consultation on the Council's website and a public notice was displayed outside of the front of the Town Hall and the Council's Offices at Pier Avenue, Clacton on Sea.

The below were written to inviting them to comment on the draft policy:

- All Tendring District Councillors
- All Parish Councils
- Responsible Authorities under the Licensing Act 2003 (including Essex Police)
- Institute of Licensing
- A number of licensing solicitors
- A range of licence holders of local premises licence (including pubs, off-licences, night time economy, street traders, gambling premises and taxis)

In addition to the consultation letters the licensing team also visited a number of licence holders within the District handing out consultation postcards to bring the consultation to the attention of the trader and invite them to voice their opinions.

5 members of the public, 2 businesses, 1 Town Council and 1 Responsible Authority sent in responses to the consultation. Their comments are set out in Appendix B to this report.

EQUALITIES

In preparing this report, due consideration has been given to the Council's statutory Equality Duty to eliminate unlawful discrimination, advance equality of opportunity and foster good relations, as set out in Section 149(1) of the Equality Act 2010.

The Licensing Authority will have due regard to the public sector equality duty under the Equality Act 2010. Under this duty, the Authority (in the exercise of its functions) must have due regard to the need to:

- eliminate any form of unlawful discrimination (including direct or indirect discrimination, harassment, victimisation, and any other conduct prohibited under the Act);

<ul style="list-style-type: none"> • advance equality of opportunity between people who share a relevant characteristic and people who do not; • foster good relations between people who share a protected characteristic and people who do not. 	
SOCIAL VALUE CONSIDERATIONS	
There are no direct social value considerations arising in respect of this policy.	
IMPLICATIONS FOR THE COUNCIL'S AIM TO BE NET ZERO BY 2030	
There are no environmental implications arising directly from the content of this report.	
OTHER RELEVANT IMPLICATIONS	
Consideration has been given to the implications of the proposed decision in respect of the following and any significant issues are set out below.	
Crime and Disorder	The Council has a duty under Section 17 of the Crime and Disorder Act 1998 to do all that it reasonably can to prevent crime and disorder in its area.
Health Inequalities	There are no direct implications arising from the proposals set out in this report.
Area or Ward affected	All

PART 3 – SUPPORTING INFORMATION

BACKGROUND
<p>The Business and Planning Act 2020 (“BPA20”) received royal assent on 22nd July 2020 and made significant changes designed to help premises (including public houses, cafes, bars, restaurants, snack bars, coffee shops, and ice cream parlours) to survive and bounce-back from the covid pandemic lockdowns.</p> <p>The BPA20 included a new “Pavement Licence” regime, to be administered by local authorities, designed to make it easier for premises serving food and drink (such as bars, restaurants and pubs) to seat and serve customers outdoors through temporary changes to planning procedures and alcohol licensing.</p> <p>The pavement licence provisions were originally due to expire in September 2021 but due to the continuation of the covid pandemic associated restrictions and the success of the pavement licensing scheme it was extended multiple times.</p> <p>As part of the Levelling Up and Regeneration Act 2023 (“LURA23”) the pavement licensing scheme has been made permanent, albeit with some amendments from the temporary provisions which are summarised in Table 1.</p>

Changes	Business Planning Act 2020	Levelling Up and Regeneration Act 2023
Licence length	Max 1 year	Max 2 years
Fees	£0-£100	£0-£500 (new applications) £0-£350 (renewals)
Renewals	No renewal process	Renewal requirements introduced
Consultation time frame	7 days	14 days
Determination time frame	7 days	14 days
Public Space Protection Order (PSPO)	Not included as an exemption	Included as an exemption
Enforcement	Permits for revocation and serving of notices	Permits for revocation and serving of notices and also permits the removal of furniture, storage of it, recovery of costs incurred and disposal of it. Also that instead of revocation the licence can be amended in prescribed circumstances.

The Licensing and Registration Committee at its meeting on 24 July 2024 agreed to undertake public consultation on the draft revised policy.

PREVIOUS RELEVANT DECISIONS TAKEN BY COUNCIL/CABINET/COMMITTEE ETC.

Licensing and Registration Committee of 24 July 2024 (minute 11 refers)

BACKGROUND PAPERS AND PUBLISHED REFERENCE MATERIAL

[Levelling-up and Regeneration Act 2023 \(legislation.gov.uk\)](https://legislation.gov.uk)

[Pavement licences: guidance - GOV.UK \(www.gov.uk\)](https://www.gov.uk)

APPENDICES

Appendix A – Draft Pavement Licensing Policy
Appendix B – Consultation Responses

REPORT CONTACT OFFICER(S)

Name	Michael Cook Keith Simmons
Job Title	Licensing Manager Head of Democratic Services and Elections
Email/Telephone	licensingsection@tendringdc.gov.uk 01255 686565