



Licensing and Safety Committee

6 August 2024

Pavement Licensing Policy

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Summary

The purpose of this report is for the Licensing and Safety Committee to consider the draft Pavement Licensing Policy and proposed fees and make recommendations to Full Council for approval.

1. Recommendations

- 1.1 The Licensing and Safety Committee is requested to consider the minimum unobstructed footway width options set out in section 6 of this report and advise Officers of its preferred option(s) for inclusion in the final policy to be presented to Full Council for approval.
- 1.2 The Licensing and Safety Committee is requested to consider the draft policy attached at Appendix A, advise on any amendments, and recommend the final version inclusive of any updates to Full Council for approval.
- 1.3 The Licensing and Safety Committee is requested to recommend the proposed fees set out in section 7 of this report to Full Council for approval.
- 1.4 The Licensing and Safety Committee is asked to consider the review process options outlined in section 8.3 of this report and recommend that Full Council agree the proposed review procedure set out in section 6 of the appended Draft Policy.
- 1.5 The Licensing and Safety Committee is asked to recommend that Full Council agree for all powers and functions relating to Pavement Licensing as set out in the Business and Planning Act 2020, including any legislation amending or replacing the same, to be included within the existing delegations set out in the Constitution made to the Licensing and Safety Committee, and Assistant Director, Legal and Governance, respectively.

2. Budget and Policy Framework

- 2.1 The Committee's terms of reference state that the Licensing and Safety Committee will make recommendations to Council for approval of a number of licensing policies.

3. Background

- 3.1 On 25 June 2020, the Government announced relaxations to planning and licensing laws to help the hospitality industry recover from the Covid-19 lockdown.

- 3.2 Amongst other provisions, the Business and Planning Act 2020 introduced a new 'Pavement Licensing' regime to support businesses selling food and drink only, in order to support economic recovery and growth as lockdown restrictions were lifted but social distancing guidelines remained in place.

- 3.3 It was implemented as a fast-track process in light of the reopening of premises following the disruption caused by COVID-19 and was initially due to expire on 30 September 2022, but later extended until 2023 and then again until 21 September 2024. Under that Act:

- A person may still have applied for permission to put furniture on the highway under Part 7A of the Highways Act 1980, but the local authority could not require them to apply under that Act, instead of under the temporary pavement licensing provisions.
- Local authorities retained their power under section 149 of the Highways Act to remove furniture placed on the highway should it constitute a nuisance or danger under that section. There were no enforcement powers contained within the Business and Planning Act 2020 to deal with premises placing furniture on the highway without having a Temporary Pavement Licence; any such premises would have to have been dealt with under S149 of the Highways Act.
- Where a person had applied for a licence under the Highways Act 1980 and paid a fee and then, before a decision was made on that first application, applied for a pavement licence, the local authority could not have charged a fee in respect of the application for a pavement licence, and the first application was treated as being withdrawn.
- The fee for a Temporary Pavement Licence was capped at £100.

- 3.4 Medway decided to suspend the Temporary Pavement Licensing regime as Highways did not have a regime in place and were the only department that were able to enforce premises that placed furniture on the highway without a pavement licence either from them or from Licensing. Instead, guidance was issued to food and drink premises to assist them in ensuring that the introduction or retention of tables and chairs was done so responsibly, copy attached at Appendix B.

- 3.5 With effect from 31 March 2024, the Levelling Up and Regeneration Act 2023 made permanent the pavement licensing regime under the

Business and Planning Act 2020, with a number of new provisions and transitional arrangements:

- Any businesses that would require a licence to place furniture on the highway which would fall within the scope of the Pavement Licensing regime, must apply under that regime and not via any alternative legal frameworks, i.e. the Highways Act.
- A standard fee cap: £500 for new applications and £350 for renewals, intended to balance both local authority and business interests, but enabling local authorities to recover costs of processing, monitoring and enforcing licences.
- Increasing the previous 7-day consultation and 7-day determination periods provided under the temporary regime to 14 days for each.
- Existing licences with no end date are extended to 2 years from the commencement date. This is not applicable in Medway as no licences have been issued.
- Licences can be granted for up to 2 years.
- To obtain a licence for any period after 31 March 2024, a new application will need to be made even if the premises already had a licence until 31 March 2024. However, it should be treated as a renewal if it is made by the licence holder, is in respect of the same premises and is on the same terms as the expired licence.
- Enforcement powers to deal with businesses placing furniture, which would be permitted by a pavement licence, on the highway without obtaining a licence. This is by way of giving notice to such premises requiring removal before a specified date unless they obtain a licence. Where this is not complied with, furniture can be seized and stored for up to 3 months and handed back upon payment of reasonable costs or otherwise disposed of by the local authority and proceeds of sale kept.
- Local authorities can also amend a licence in certain circumstances and with consent of the licence-holder to address specific problems arising.

3.6 The 2020 Act sets out two national conditions which apply to all pavement licences which are granted or deemed to be granted; these are: a no-obstruction condition and a smoke-free seating condition:

1. *Smoke-free seating condition*

Where furniture to be put on the relevant highway consists of seating for use by persons for the purpose of consuming food or drink, the licence-holder must make reasonable provision for seating where smoking is not permitted.: Ways of meeting this condition may include:

- *Displaying clear 'smoking' and 'non-smoking' areas, with 'no smoking' signage in designated 'smoke-free' zones in accordance with Smoke-free (Signs) Regulations 2012.*

- *Not providing nor permitting ash trays or similar receptacles in areas where smoke-free seating is identified.*
- *Providing a minimum 2m distance between non-smoking and smoking areas, wherever possible.*

2. No-obstruction condition.

Anything done by the licence-holder pursuant to the licence, or any activity of other persons which is enabled by the licence, must not have an effect specified in section 3(6) of the Act:

These effects are:

- (a) *preventing traffic, other than vehicular traffic, from—*
 - (i) *entering the relevant highway at a place where such traffic could otherwise enter it (ignoring any pedestrian planning order or traffic order made in relation to the highway),*
 - (ii) *passing along the relevant highway, or*
 - (iii) *having normal access to premises adjoining the relevant highway*
- (b) *preventing any use of vehicles which is permitted by a pedestrian planning order or which is not prohibited by a traffic order,*
- (c) *preventing statutory undertakers having access to any apparatus of theirs under, in, on or over the highway, or*
- (d) *preventing the operator of an electronic communications code network having access to any electronic communications apparatus kept installed for the purposes of that network under, in, on or over the highway.*

3.7 The Act also allows Local Authorities to set local standard conditions to be attached to all Pavement Licences. Where a local authority sets a local condition that covers the same matter as set out in national conditions, then the locally set condition takes precedent – provided there is reasonable justification to do so.

3.8 When setting conditions, local authorities are required to consider the needs of disabled people and ensure that footways and footpaths remain accessible, and their safety is not put at risk. The proposed Standard Conditions are attached at Appendix 3 of the Policy. Members attention is drawn to conditions 15 & 17 which states:

15. *A minimum continuous unobstructed footway width of at least 1.6 metres (not including kerbs) must be maintained at all times.*

17. *All tables, Chairs and temporary furniture shall be separated from the remaining highway using disability compliant barriers. Barriers MUST:*

- a. *Be between 1000mm and 1200mm in height*

- b. Have a continuous tapping rail (150mm to 200mm deep) or panel edge either on the ground or up to a maximum height of 200mm above the ground.*
- c. Have a colour contrast to ensure they are highly visible.*
- d. Be continuous around the area of tables, Chairs and temporary street furniture except for the access point*
- e. Be removed from the highway outside the licensed hours.*

These conditions ensure compliance with the National Condition in relation to no obstruction.

- 3.9 As stated in para 3.4 the Temporary Pavement Licensing regime was suspended in Medway due to inability to enforce premises placing tables and chairs on the highway without a licence.
- 3.10 As the Business and Planning Act 2020 has been amended to include the ability to enforce food and drink premises putting table and chairs on the highway without a licence we are now in a position to implement the Pavement Licensing regime in Medway.
- 3.11 The standard conditions have been amended to remove all references to social distancing following removal of COVID-19 restrictions on 19 July 2021.

4. Risk Management

- 4.1 No issues identified. This report is limited to creating a policy and setting of fees to contribute towards the recovery of costs of the service.

5. Consultation and Engagement

- 5.1 There is no statutory requirement to consult on adoption of a Pavement Licensing Policy. However, prior to the Business and Planning Act 2020 coming into force on 21 July 2020 officers engaged with Environmental Protection, Highways, Public Health and Kent Police seeking their views on the draft conditions and application form.
- 5.2 Two responses were received; one requesting the addition of the word 'continuous' to the minimum unobstructed footway width and the other requesting the application includes the measurements of the footway and sizes of furniture used.
- 5.3 The final draft conditions were considered by a Bronze meeting and a further amendment was made to the minimum continuous unobstructed width from 1.5m to 1.6m.
- 5.4 These conditions came into effect on the 21 July 2020 and were set out in the guidance sent to all hospitality businesses as shown in Appendix B.
- 5.5 All food and drink premises within Medway have already been written to outlining the forthcoming implementation of a Pavement Licensing regime. The Town Centre Forums in Medway are also being advised of the changes to communicate to their members. A copy of the letter sent is attached at Appendix C.

5.6 Further communication will be circulated to all food and drink businesses, and via the Town Centre Forums and Social Media (via the Communications Team) once approval of the Policy and delegations is received from Full Council and all systems are in place to start accepting and processing applications.

6. Minimum Unobstructed Footway Width Options

6.1 As outlined above, a key element of the regime is ensuring that the needs of disabled people are suitably considered and accommodated, in accordance with the duties placed on local authorities by the Equalities Act 2010.

6.2 One of the main ways in which this is supported, is by application of the national 'no obstruction condition', as may be further quantified by locally set conditions, which seeks to ensure that a minimum unobstructed width of footway is maintained for wheelchair users and other disabled people to pass.

6.3 As mentioned above, locally set conditions take precedent over national conditions, provided they are reasonably justified.

6.4 The Pavement Licensing guidance advises that, in the absence of relevant local conditions, local authorities should have regard to sections 3.2 and 4.2 of the Department for Transport's 'Inclusive Mobility' Best Practice Guidance on Access to Pedestrian and Transport Infrastructure.

6.5 This advises that:

- Footways and footpaths should be made as wide as is practicable, but under normal circumstances, a width of **2000mm** is the minimum that should be provided, as this allows enough space for two wheelchair users to pass, even if they are using larger electric mobility scooters.
- If this is not feasible due to physical constraints, then a minimum width of **1500mm** could be regarded as the minimum acceptable under most circumstances, as this should enable a wheelchair user and a walker to pass each other.
- However, where there is an obstacle such as lamp columns, signposts or electric vehicle charging points, the absolute minimum width should be **1000mm** but the maximum length of such a restricted space should be 6 metres.

6.6 As referenced in sections 3.7, 5.3 and 5.4 of this report, when considering the implementation of the temporary regime during the pandemic, a locally agreed condition requiring that, '*A minimum continuous unobstructed footway width of at least 1.6 metres (not including kerbs) must be maintained at all times,*' was agreed following internal consultation and sent out in the guidance sent to businesses.

6.7 It was considered that this approach represented a sensible distance that provided an enhancement for wheelchair users over the 1500mm minimum distance reflected in the Inclusive Mobility guidance (and which was also recommended by KCC Highways), whilst also providing

clarity to applicants, licence holders, council officers, and the public alike to assist in establishing eligibility and enforcement, which would otherwise be challenging due to the range of options and ambiguity arising from the Inclusive Mobility guidance.

- 6.8 The chosen minimum distance(s) will have to strike a balance between the needs of disabled people and legal equality duties placed on the council, and the impacts of those restrictions on the local food and drink businesses which this regime is intended to benefit.
- 6.9 It is additionally important that any such conditions are clear, proportionate and justifiable to reduce the likelihood and complexity of challenges/appeals.
- 6.10 With the above in mind, Members of the Committee are asked to consider and advise officers on their preferred approach for inclusion in the final policy to be presented to Full Council for approval, with the main options being:
- Retain the local condition of '*A minimum continuous unobstructed footway width of at least 1.6 metres (not including kerbs) must be maintained at all times.*'
 - Amend the same condition to an alternative distance or set of distances.
 - Remove the local condition and rely on the national 'no obstruction condition' and associated Inclusive Mobility document (but keeping in mind these represent guideline distances only).
 - Adopt the distances recommended within the Inclusive Mobility guidance (as may vary from time to time) as local conditions, accompanied by additional clarity, such as whether the 1000mm distance over a maximum 6m length would be applied per business or per road, etc.

7. Fees

- 7.1 The legislation requires that applications for pavement licences made to a local authority must, amongst other things, be accompanied by such fee as it requires - up to set maximums being £500 for first time applications and £350 for renewals.
- 7.2 The introduction of this regime in Medway represents a new and untested remit in relation to a function that has to date been unregulated.
- 7.3 Whilst it is difficult therefore to accurately predict the level of work and time that will be required, there is potential for the burden to be significant.
- 7.4 Initial time-based costings have been estimated and indicate that it would be appropriate to charge the maximum fees of £500 for first time applications and £350 for renewals; bearing in mind that licences will ordinarily be granted for a standard two-year duration reflecting an equivalent cost per annum of £250 in years 1 and 2, and £175 in

subsequent years, and that all fees and charges are subject to annual review.

- 7.5 It is recommended therefore the fees of £500 for first time applications and £350 for renewals are recommend to Full Council for approval.

8. Financial and legal implications

- 8.1 The increase in the price cap imposed by Government assists the Council in covering the costs of implementing, maintaining and enforcing this regime.
- 8.2 There is no statutory requirement to have a pavement licensing policy, however it is good practice to do so. A policy assists with consistent and transparent decision making; however, each case must be considered on its own merits with the decision maker being prepared to make exceptions to the policy in appropriate circumstances
- 8.3 There is no statutory appeal process for refusals to grant a licence, grant a licence with conditions or revocation of a licence. However, there is scope for an internal review process, and it is recommended that Members should consider this and determine whether any such review should be conducted by the Licensing Sub Committee or by delegation to the Assistant Director of Legal and Governance, with the latter being recommended by officers to support the Government's intention of this regime providing a fast-track application process.
- 8.4 The proposed Appeal Process is set out in section 6 of the appended Draft Policy, starting from the bottom of page 10.

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Appendices

Appendix A – Proposed Pavement Licensing Policy

Appendix B - Guidance sent to food & drink premises in 2020

Appendix C – Advice of changes sent to food and drink premises

Background papers

None