

# ***Report to the Cabinet***

***Report reference: C-032-2024-25***

***Date of meeting: 11<sup>th</sup> November 2024***



**Portfolio: Councillor Paul Keska Regulatory & Technical Services**

**Subject: Pavement Licensing Policy**

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## **Recommendations/Decisions Required:**

- (1) Cabinet Adopt the revised policy;
- (2) Agree that licences will be granted for the maximum two years, unless there are good reasons for granting a licence for a shorter period; and
- (3) Agree that further consultation and Cabinet approval will not be required on the pavement licensing policy where amendments are required solely to reflect legislative changes however, Portfolio holder approval will be required.

## **Executive Summary:**

The Levelling Up and Regeneration Act 2023 makes permanent the provisions set out in the Business and Planning Act (BPA) 2020. This permanent regime retains the key features of the 2020 legislation, intended to streamline processing and reduce costs, but also incorporates some key changes, to ensure long-term sustainability of the model.

The existing Pavement Licensing Policy was approved by Cabinet on 20<sup>th</sup> July 2020, and it is necessary to amend and update the policy to reflect legislative changes and guidance.

The amended policy details the process to be followed when determining applications for the grant or renewal of a licence, standard conditions which will be attached to all Pavement Licences and the enforcement powers available to the Council following non-compliance.

## **Reasons for Proposed Decision:**

The Levelling Up and Regeneration Act 2023 makes permanent the provisions set out in the Business and Planning Act (BPA) 2020 and in response it has become necessary to review and amend the existing policy to reflect legislative changes and the updated guidance.

## **Other Options for Action:**

The Policy outlines the relevant legislation and gives guidance to new applicants, existing licence holders, consultees and members of the public as to how the Council will administer and enforce the requirements of the Act.

There is no legislative requirement within the Business and Planning Act 2020 for the Council to have a Pavement Licensing Policy in place however, it is considered good governance and best practice do so.

Where a policy is adopted it must reflect the current legislative requirements contained within the Business and Planning Act 2020, there is no alternative option.

### **Report:**

1. Pavement licensing was introduced under The Business and Planning Act 2020 as part of Governments emergency response to the COVID pandemic. Its intent was a simplified and fast track route for pubs, restaurants, and cafes to obtain a temporary permission to place furniture including outdoor tables and seating on the highway, allowing them to increase their outdoor capacity safely, quickly and at a low cost.
2. Cabinet met on 20<sup>th</sup> July 2020 and agreed the existing pavement licensing policy and scheme of delegation. The regime was first extended in 2021, and subsequently in 2022 and 2023 and throughout this period, the scheme of delegation for determining applications, conditions and pavement licensing policy have remained unchanged.
3. The Levelling Up and Regeneration Act 2023 makes permanent the provisions set out in the Business and Planning Act (BPA) 2020. This permanent regime retains the key features of the 2020 legislation, but also incorporates some key changes, including those outlined below, to ensure long-term sustainability of the model.
  - Amend the fee councils can charge applicants, increasing it from £100 to a maximum £350 for renewal and £500 for new applicants.
  - Public consultation is 14 days, beginning the day after the application is submitted, excluding public holidays (previously 7 days).
  - Local Authorities must determine applications within 14 days, beginning the day after the consultation period has ended, excluding public holidays (previously 7 days). Failure to do so results in the licence being granted as applied for, subject to local conditions.
  - Expectation that Councils issue licences for a maximum 2-year period, unless there is good reason for granting a licence for a shorter period.
  - Pavement Licences can be amended by the local authority with the consent of the licence holder if it is considered that the conditions on the licence are not being met.
  - Prohibits a local authority from granting a tables and chairs licence under the old regime (Highways Act 1980) if a pavement permit is capable of being granted under this legislation.
  - Ability to revoke a licence due to breach of condition, false or misleading statements being made in their application or failure to display a public notice for the duration of the consultation period.
  - Ability to give notice requiring business to remove furniture placed on the highway without the required licence by a specified date.
  - Ability to remove and store furniture, in violation of a notice.
4. It has become necessary to review and amend the existing policy to reflect legislative changes and the updated guidance. The amended policy also makes it clear that permission will not be granted at locations, on the days or times when markets, seasonal events or the space is in use for charitable or community purposes.

5. There are currently 22 active pavement licences across the district.

### **Scrutiny Comments**

Prior to wider consultation on the draft policy, discussions have taken place with Essex County Council Highways to ensure that conditions contained within the policy, remain fit for purpose. Members of the Councils Licensing Committee have also been written to and asked for comments on the proposed policy.

### **Resource Implications:**

The Business and Planning Act 2020 is firmly embedded within the existing service provision and there will be no additional staff resource and there are no resource implications on other Council Services.

Applications for the grant or renewal of pavement are subject to an application fee. These fees have been set on a full cost recovery basis and will be reviewed annually as part of the Councils fees and charges schedule.

Where it is necessary for the Council to remove unauthorised furniture placed on the highway, in violation of the notice, the Council may remove and store the furniture, recover the costs from the business for the removal and storage of the furniture and refuse to return the furniture until those costs have been paid. If within 3 months of the notice, the costs are not paid, the Council may dispose of the furniture by sale or other means and retain the proceeds.

### **Legal and Governance Implications:**

There is no legislative requirement within the Business and Planning Act 2020 for the Council to have a Pavement Licensing Policy in place however, it is considered good governance and best practice do so.

The policy provides information on matters that will be considered by the Council when determining applications and whilst there is no statutory appeal process against a decision to refuse a licence, in the absence of a policy the Council may find it difficult to defend challenge against its decision making.

### **Safer, Cleaner and Greener Implications:**

Epping Forest District Council is keen to support local businesses and have been working in conjunction with Essex County Council under the "Safer, Greener, Healthier" initiative to improve the customer experience in high streets, enlarging pedestrianised areas which in turn improves air quality.

Securing a pavement licence will help encourage and attract more customers, provide much needed income for businesses and protect as many hospitality jobs as possible, particularly during times of increasing living costs. It is, however, important to balance the needs of the business with the right to peaceful enjoyment of neighbouring residents, and licences will be conditioned to ensure that problems with noise, litter and anti-social behaviour will be successfully managed.

The policy encourages businesses to contact the relevant Town or Parish Council, neighbouring businesses and occupiers prior to applying to the local authority, and so take any issues around noise, and nuisance into consideration as part of the proposal. The policy also sets out who will be consulted on applications to minimise the risk of any negative impact on the surrounding area in terms of health and safety, amenity (noise, ASB, litter etc.) and accessibility (impact on disabled people, older people and those with mobility needs etc.).

The Pavement Licensing Policy explains the requirements and standards expected for a pavement licence to be successfully issued and retained.

### **Consultation / Scrutiny Undertaken:**

There is no statutory requirement to consult before determining this Pavement Licence Policy however, a draft copy of the policy was placed on the Council's website inviting comments and the following were directly consulted:

- Members of the Licensing Committee
- Members of the Council
- Existing Licence holders
- Essex Police
- Designing Out Crime Officers or Counter Terrorism Security Advisors
- Essex Fire and Rescue
- Essex Highways
- Essex Trading Standards
- Relevant Council services responsible for Planning, Environmental Health, Community Safety, ASB Team, Licensing, Economic Regeneration, and Town Centre Operations
- Town and Parish Councils

The consultation ended on 30<sup>th</sup> September 2024, see appendix 2 for responses.

### **Background Papers:**

Appendix 1 – Draft Pavement Licensing Policy

Appendix 2 – Table of Responses

Levelling Up and Regeneration Act 2023

Business and Planning Act 2020

Department for Levelling Up, Housing & Communities Guidance – updated April 2024

### **Risk Management:**

Risk management will be considered with every licence application and consultation will be undertaken with relevant stakeholders to minimise the risk of any negative impact.

The Pavement Licensing Policy explains the requirements and standards expected for a pavement licence to be successfully issued and retained. It will guide the Council in its decision making and provide guidance and clarity to new applicants, existing licence holders, consultees and members of the public as to how the Council will administer and enforce the requirements of the Act.

### **Equality:**

An Equality Impact Assessment was carried out and there was no significant impact.