



ADUR & WORTHING
COUNCILS

WBC Licensing & Control Committee

23 September 2024

Ward: N/A

Levelling Up & Regeneration Act 2023 - Schedule 22

Pavement Licensing

Report by the Director for Sustainability & Resources

Since 2020 Adur & Worthing Councils have been responsible for the processing and determination of applications for Pavement Licences under temporary legislation introduced in response to the Covid-19 pandemic - the Business & Planning Act 2020. With the passing of the Levelling Up & Regeneration Act 2023 this has now become a permanent licensing function of the Councils which now must determine locally set fees, the duration of licences and appropriate conditions.

1 Recommendation

1.1 Members of Adur District Council's Licensing Committee and Worthing Borough Council's Licensing & Control Committee are requested to:

- consider the licensing provisions of the Levelling Up & Regeneration Act 2023 - Schedule 22 (the Act) and the implications for the Councils
- consider a Pavement Licensing Policy, joint between the authorities if possible, that sets out the conditions of licence, and the table of proposed pavement licence fees.

1.2 That the respective Licensing Committees consider and adopt the proposed fees, set the licence duration and the conditions of licence.

2 Introduction

2.1 The Levelling Up & Regeneration Act 2023 received Royal Assent on 26 October 2023 and came into effect on 23 April 2024. The main intention of the Act is to speed up the planning system, hold developers to account, cut

bureaucracy, and encourage more councils to put in place plans to enable the building of new homes.

- 2.2 However, the Act is not limited to modernising the planning system and among the many other measures it introduces is Schedule 22 of the Act which establishes a new national licensing regime for Pavement Licences. It includes a number of new duties that are assigned to local authorities, who become the Licensing Authority.
- 2.3 Adur District Council and Worthing Borough Council as licensing authorities, will have the responsibility for issuing, administering and enforcing pavement licences that allow food & hospitality businesses to place removable furniture over designated areas of public highways adjacent to the premises for the use of their customers to consume food and/or drink.

3 Background

- 3.1 Historically, tables and chairs permissions were granted as pavement licences by West Sussex County Council's Highways Authority, under Part 7A of the Highways Act 1980. The fee varied and involved a time consuming 28 day consultation period.
- 3.2 The Covid-19 pandemic affected businesses across the economy causing many to cease trading for several months while others had to significantly modify their operations. This particularly affected the food & hospitality industry. As a response to the pandemic, and the resulting restrictions imposed on the industry, HM Government encouraged food & hospitality businesses to trade outside where the risk of transmission was recognised as significantly reduced.
- 3.3 The Business & Planning Act 2020 was temporary legislation introduced to relax planning and licensing legislation to facilitate this. Among other measures this temporary legislation placed the responsibility for administering a new fast track pavement licensing scheme with local councils. Accordingly, Adur & Worthing Councils have been successfully issuing pavement licences under the temporary legislation since July 2020.
- 3.4 Despite the lifting of the Covid-19 restrictions the popularity and success of the new pavement licensing regime resulted in HM's Government repeatedly extending the timescale of the temporary legislation. The current licences issued under the act will continue in force until the end of September 2024. Three years later than first intended.
- 3.5 Schedule 22 of the Levelling Up & Regeneration Act 2023 consolidates and makes permanent the pavement licensing regime introduced as temporary

legislation under the Business and Planning Act 2020. It also makes a number of significant changes including:

- Permanently removing the responsibility for issuing pavement licences and enforcement from WSCC Highways Authority and placing it with the local Licensing Authority (Adur District & Worthing Borough Councils)
- Allowing Licensing Authorities to set sustainable licence fees (but introduces a standard fee cap for both new and renewals of licences)
- Allowing Licensing Authorities to determine the maximum duration of licences (up to 2 years)
- Incorporates increased authority & public consultation and determination periods.
- Provides Licensing Authorities with new powers to remove unlicensed furniture.

3.6 The new pavement licensing scheme will make it easy for premises serving food & drink such as bars, pubs, hotels, cafes and restaurants to seat and serve customers outdoors. This includes an already established but modified online fast-track application process for these businesses to obtain a permission from Adur & Worthing Councils enabling them to maximise their capacity, increase income, protect hospitality jobs and cater for the public's new found enjoyment of alfresco dining & socialising.

3.7 The Act contains a number of matters that A&W Councils will consider when determining the suitability of any application. These being:

- Public Health & Safety
 - Ensuring there is no conflict of street furniture with the principal lines of pedestrian movement particularly for disabled people, older people and those with mobility needs.
 - Ensuring that use conforms with latest guidance on crowd management, pedestrian access and traffic flow.
 - Ensuring adequate toilet & hand washing facilities are provided.
- Public Amenity
 - Ensuring the proposed use will not create a nuisance to neighbouring occupiers by generating anti-social behaviour and litter; and
- Accessibility
 - Taking a proportionate approach to considering the nature of the site in relation to which the application for a licence is made, its surroundings and its users.

3.8 The Act does not require Licensing Authorities prepare and publish a pavement licensing policy but members and officers have expressed their opinion that a

formal Adur & Worthing policy would assist in administering the function and any future deliberations regarding street trading applications.

4 Consideration

Outcomes to be Achieved

- 4.1 The councils to comply with the new statutory duties to administer and enforce the various requirements contained within the Levelling-up Regeneration Act 2023 that amended the Business and Planning Act 2020.
- 4.2 To ensure that the placing of furniture on the public highway is undertaken in a safe, controlled, and consistent manner.
- 4.3 That fees are set at the appropriate level, this being that the reasonable cost of providing the service is fully recovered from the service user.

Policy & Conditions

- 4.4 A draft statement of A&W Councils' Pavement Licensing Policy, which includes the standard conditions and national conditions of licence, is attached to this report. The draft statement accords with the provisions of Schedule 22 of the Levelling Up & Regeneration Act 2023 has been compiled to reflect the national guidance published with the Act by HM Government. (Appendix A)
- 4.5 There is no statutory requirement for the Council to undertake any consultation with respect to the matters raised in this report. Accordingly, as the draft policy simply reflects the national guidance it is not considered necessary to undertake authority & public consultation.
- 4.6 The Adur Licensing Committee considered and approved the adoption of this policy on 09 September 2024 but with the exclusion of the provision of artificial heaters/patio heaters from the list of furniture that may be permitted. The decision was primarily made on environmental grounds considering the inherent inefficiency of outdoor heaters. Accordingly, the the policy will include a condition at 2.5 stating:

The council will not licence the use of artificial heaters on the highway. Blankets can be used to provide warmth. The weather should be favourable on most days during British Summer Time. On days when it is not, patrons have the option of sitting inside

and a condition in Annex 1 - Standard Pavement Licence conditions stating:

Artificial heaters must not be placed in the designated seating area on the highway.

Members may want to consider this amendment in light of the Worthing Borough Council's declaration of a climate emergency in 2019, and pledges made since to be carbon neutral by 2030.

- 4.7 Should a policy be adopted, officers undertake to write directly to all current Pavement Licence holders making them aware of the impending changes. Officers will continue to support applicants in submitting either a new or renewal application.
- 4.8 Members will need to be satisfied that the policy is not fettering their discretion but simply setting out a general standard.

Licence Fees

- 4.9 In order to ensure that council tax payers are not subsidising work concerning licensing administration, compliance & enforcement, income is raised from licence fees with the aim of recovering the costs of each licensing regime within the constraints of regulation. Conversely, licence fees should not be used to raise surplus revenues.
- 4.10 The temporary pavement licensing scheme introduced by the Business & Planning Act 2020 and administered by A&W Councils was an emergency provision introduced to assist food & hospitality businesses survive during the Covid pandemic. Many businesses were either forced to cease trading or had to significantly scale back their operations for several months.
- 4.11 Recognising the severe plight of these businesses Adur & Worthing Councils temporarily waived the fees for the Pavement licences issued between 2020 - 2024. Obviously such a measure was never considered sustainable.
- 4.12 Having delivered the function for several years free of charge, it is now essential that appropriate fees are charged which cover not only the cost of processing an application but also undertaking compliance checks and enforcing the legislation. The cost of providing the function must be paid for by the service user.
- 4.13 Under the new Pavement Licensing scheme introduced by Schedule 22 of the Act the Licensing Authority must set the licence fees but the fees are capped by the legislation at:
- £500 for a first time application
 - £350 for renewals.
- 4.14 The Licensing Authority can issue a licence for a minimum of 3 months to a maximum duration of 2 years.
- 4.15 For the first 2 years under the new scheme it is proposed to charge businesses on a tiered scale:

	First Annual Fee	Renewal Fee
Businesses up to 2 & 8 covers	£350	£250
Businesses over 2 tables vers	£500	£350

and to issue licences for a maximum of 12 months.

- 4.16 Existing staff within the Licensing Team will be responsible for the administration and compliance checks associated with the various provisions. Resourcing will therefore need to be kept under review and may need adjustment dependent upon the number of applications and compliance issues that arise. Accordingly, it is proposed that these charges and timescales will be reviewed after 2 years to ensure that costs are not being subsidised by the A&W Councils and conversely the Councils are not raising surplus revenues.

5. Legal Implications

- 5.1 In determining this matter the principles of the Human Rights Act 1998 must be taken into consideration and the convention rights of both individuals and businesses given due weight.
- 5.2 Members must consider each licensing matter on its own merits, and in accordance with the principles of natural justice, as well as the provisions of the Levelling Up & Regeneration Act 2023 and Local Government (Miscellaneous Provisions) Act 1982. All relevant factors must be taken into account, and all irrelevant factors must be disregarded.
- 5.3 All licensing matters, before a Licensing Committee, must be considered against the backdrop of anti-discriminatory legislation, such as the Equality Act 2010 and also in accordance with the Council's stated policy on Equal Opportunities.
- 5.4 In accordance with Section 17 of the Crime and Disorder Act 1998 the Council is under a duty to exercise its functions with due regard to the likely effect on, and the need to do all it reasonably can to prevent crime and disorder in its areas.

6. Other Implications

- 6.1 Any decision taken will have regard for the local environment and, in particular, any conditions attached for the purposes of preventing public nuisance will take this principle into account.

6.2 There are no significant crime & disorder, equal opportunities, race relations or financial implications arising from this report. Crime & disorder, and environmental implications have been considered.

7. Recommendation

Members are requested to:

7.1 Consider the pavement licensing provisions of the Levelling Up & Regeneration Act 2023 - Schedule 22 and consider the implications for A&W Councils.

7.2 Consider and comment on the attached draft statement of Pavement Licensing Policy and approve the adoption of the draft policy, with any amendments agreed at the meeting.

7.3 Approve the proposed Pavement Licence fee structure.

Paul Brewer

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Background Papers:

- Levelling Up & Regeneration Act 2023 - Schedule 22
<https://www.legislation.gov.uk/ukpga/2023/55/enacted>
- HM Govt Guidance to Pavement licences:
<https://www.gov.uk/government/publications/pavement-licences-guidance/pavement-licences-guidance>

Appendices:

- Appendix A - Draft A&W Statement of Pavement Licensing Policy

Town Hall, Worthing

Ref: SJ/Lic.U/A&WC Pavement Licensing Policy

Date: August 2024.

Schedule of other matters

1.0 Council Priority

1.1 Matter considered and no issues identified.

2.0 Specific Action Plans

2.1 Matter considered and no issues identified

3.0 Sustainability Issues

3.1 Matter considered and no issues identified

4.0 Equality Issues

4.1 Brought to the attention of members within the report otherwise no issues identified.

5.0 Community Safety issues (Section 17)

5.1 Matter considered and no issues identified

6.0 Human Rights Issues

6.1 Human rights concerns are brought to the committee's attention within the report.

7.0 Reputation

7.1 Matter considered and no issues identified.

8.0 Consultation

8.1 Consultation not required as policy simply reflects the legislation and national guidance.

9.0 Risk assessment

9.1 Matter considered and no issues identified.

10.0 Health & Safety Issues

10.1 Issues highlighted in report

11.0 Procurement Strategy

11.1 Matter considered and no issues identified.

12.0 Partnership working

12.1 Matter considered and no issues identified.