



ADUR DISTRICT COUNCIL

Licensing Committee
13 January 2025
Agenda Item 7

Ward(s) Affected: All

Levelling Up & Regeneration Act 2023 - Schedule 22 Pavement Licensing Report by the Director for Sustainability & Resources

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Executive Summary

1. Purpose

- 1.1 Schedule 22 to the Levelling Up & Regeneration Act 2023 amends the Business & Planning Act 2020 and requires the Licensing Authorities, Adur District Council and Worthing Borough Council set up new licensing regimes to administer & enforce the new legislation allowing hospitality businesses to place tables & chairs adjacent to their premises on the public pavement.
- 1.2 The act requires that the Licensing Authority sets out its local conditions of licence and licence fees within the constraints imposed by the legislation.
- 1.3 Adur Licensing Committee agreed a new Pavement Licence scheme & fees at its meeting on 09 September 2024. However, after requests for more engagement with local businesses the matter is being referred back to the Committee to give members the opportunity to consider the views expressed during the engagement exercise.

2. Recommendations

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

- 2.2 Consider the attached draft statement of Pavement Licensing Policy with particular consideration to the provision of outside heaters. Approve the adoption of the draft policy, with any amendments agreed at the meeting.
- 2.3 Approve a Pavement Licence fee structure including licence duration and fee levels as detailed at 5.18.

3. Context

- 3.1 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.
- 3.2 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.
- 3.3 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.

4. Background

- 4.1 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.
- 4.2 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.

- 4.3 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. Whilst the County Council continued to enforce the legislation through the Highways Act 1980. Accordingly, Adur & Worthing Councils have been successfully issuing pavement licences under the temporary legislation since July 2020.
- 4.4 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 last licences issued under the act continued in force until the end of September 2024. Three years later than first intended.
- 4.5 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.
- 4.6 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.

4.7 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.

4.8 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.

5 Consideration

Outcomes to be Achieved

- 5.1 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 & Planning Act 2020.
- 5.2 To ensure that the placing of furniture on the public highway is undertaken in a safe, controlled, and consistent manner.
- 5.3 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

- 5.4 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)
- 5.5 The local conditions of licence reflect those recommended by the government. The only issue that has been consistently raised and members are asked to consider is whether free-standing outdoor patio heaters should be permitted to be sited on the public pavement within a premises' designated area because of their inherent inefficiency, high energy consumption and resulting environmental concerns. If permitted whether they should be gas powered, electrical or either.
- 5.6 Members will need to be satisfied that the policy is not fettering their discretion but simply setting out a general standard.

Duration of Licences

- 5.7 The Licensing Authorities can issue a licence for a minimum of 3 months to a maximum duration of 2 years.

Licence Fees

- 5.8 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.
- 5.9 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.
- 5.10 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.
- 5.11 Having delivered the issuing 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 to cover the Licensing Authorities' new

responsibility to undertake compliance checks and enforce the legislation. The cost of providing the function should be paid for by the service user.

- 5.12 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.
- 5.13 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 any charges and timescales set will be reviewed after 2 years to ensure that costs are not being subsidised by A&W Councils and conversely the Councils are not raising surplus revenues.
- 5.14 A revised breakdown of the estimated costs involved in processing applications, ensuring the compliance of licence holders with the terms & conditions of their licence and enforcing the regulations with regard to unlicensed premises has been prepared for members reference and this can be found at Appendix B.
- 5.15 Local Authorities around Sussex have differing fee structures and a list of these can be found at Appendix C. Members should note that some authorities have not yet implemented a new scheme.
- 5.16 Members might also like to note that prior to 2020 when 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. Their fees were set on a cost recovery basis. The fee for a pavement licence issued by WSCC in 2018, the last year fees were published, was set at £412 for the initial year and £200 for a subsequent 2 years.
- 5.17 The applications made by businesses that hold a valid current Pavement Licence under the Highways Act 1980 or the Business & Planning Act 2020 will be treated and charged as renewal applications. There is no provision under the legislation to transfer licences or vary licences.
- 5.18 There are various fee structures that could be adopted and these are some suggestions for members consideration:

Option 1 - Simple fixed fee

Fees are charged at a fixed rate. Same fee for all businesses.

New Licence	Renewal Fee
£500	£350

and to issue licences for a maximum of 12 months for the first two years then fees & licence durations subject to a review.

Option 2 - Tiered fees based on covers

Fees are charged on the number of outdoor covers on a simple tiered scale:

No. of tables and chairs	New Licence	Renewal Fee
Small Businesses up to 3 tables and 12 chairs maximum	£375.00	£275.00
Larger Businesses with more than 3 tables or 12 chairs	£500.00	£350.00

Or alternatively

The the fees approved by the Adur Licensing Committee on 09 September 2024 and considered by the Licensing & Control Committee on 23 September 2024

No. of tables and chairs	New Licence	Renewal Fee
Small Businesses up to 2 tables & 8 covers	£350	£250
Larger Businesses with over 2 tables & 8 covers	£500	£350

and to issue licences for a maximum of 12 months for the first two years then fees & licence durations subject to a review. This seems to be the preferred scheme from the results of engagement.

Option 3 - Tiered fees based on rateable value

Fees are charged to businesses based on the premises' non domestic rateable value.

Band A	Band B	Band C	Band D
£0-£4,300	£4,301-£15,000	£15,001-£30,000	£30,001+

Band	New Licence	Renewal Fee
Band A	£350	£250
Band B	£400	£300
Band C & D	£500	£350

and to issue licences for a maximum of 12 months for the first two years then fees & licence durations subject to a review.

Option 4 - Tiered fees based on meterage

Fees are charged based on the designated area of the pavement the business can use

New Licence	£350.00 - up to 15sq Metre area
	£500.00 - 15 sq Metre area or larger
Renewal fee	£250.00 - less than 15sq Metre area
	£350.00 - 15 sq Metre area or larger

and to issue licences for a maximum of 12 months for the first two years then fees & licence durations subject to a review.

6. Engagement and Communication

- 6.1 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 was not considered necessary to undertake authority & public consultation.
- 6.2 Initially licence holders and businesses were engaged informally prior to the introduction of the new scheme.
- 6.3 At the WBC Licensing & Control meeting on 23 September 2024 to consider the new pavement licence scheme, Members deferred their decision and indicated that the public & businesses should be further engaged to seek their views on a number of matters including fee structures.
- 6.4 A number of written representations have been received from the public & businesses these can be found at Appendix D
- 6.5 Between 16 October and 12 November 2024 members of the public and local business were engaged via an online survey. In addition businesses were contacted by email referring them to the survey. This included 84 current and previous pavement licence holders, Worthing BID, Adur & Worthing Chamber of Commerce, Worthing Pubwatch and other local businesses.
- 6.6 A total of 6 responses were received in Adur and 20 responses in Worthing. These have been collated and at Appendix E you will find the results for Adur and Appendix F for Adur & Worthing.

7. Financial Implications

- 7.1 The Act allows Licensing Authorities to set sustainable licence fees on a cost recovery basis to cover the costs of administration, compliance and enforcement but introduces a standard fee cap for both new and renewals of licences see paragraph 5.12
- 7.2 A table of estimated costs of the A&W Licensing Unit involved in administering and enforcing the scheme are included at Appendix B.

8. Legal Implications

- 8.1 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.

- 8.2 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 Local Government (Miscellaneous Provisions) Act 1982. All relevant factors must be taken into account, and all irrelevant factors must be disregarded.
- 8.3 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.
- 8.4 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.

9. Other Implications

- 9.1 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.
- 9.2 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.

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>
- ADC Pavement Licence Report & Minutes from meeting held on 09 Sept 2024:
<https://democracy.adur-worthing.gov.uk/ieListDocuments.aspx?CId=141&MIId=2049&Ver=4>

Appendices:

- Appendix A - Draft A&W Statement of Pavement Licensing Policy
- Appendix B - Estimated A&W Pavement Licensing Administration & Enforcement Costs

- Appendix C - Sussex Licensing Authority Pavement Licence fee structures
- Appendix D - Letters & Emails from members of the public & businesses
- Appendix E & F - Engagement Feedback

Sustainability & Risk Assessment

1. Economic

- There is a basis in case law that the Council recovers its costs in facilitating and administering licensing. An increase in consumer confidence will benefit the economic viability of such businesses.

2. Social

2.1 Social Value

- Regulating premises which offer licensable activities has a positive impact on our communities by increasing trust and confidence in these activities.

2.2 Equality Issues

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

2.3 Community Safety Issues (Section 17)

- Effectively licensing these activities will reduce crime and disorder and meet the Council's duties regarding crime and disorder reduction targets.

2.4 Human Rights Issues

- Matter considered and no significant issues identified

3. Environmental

- Matter considered and no significant issues identified

4. Governance

- Matter considered and no significant issues identified