

# **Pavement Licenses - New Licensing Fee - Decision taken under urgency powers (S035)**

## **Community Services Committee Tuesday, 5 November 2024**

Report of: Deputy Chief Executive

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Purpose: For Information

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Publication status: Open

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Wards affected: All

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### **Executive summary:**

During the Committee's meeting on Tuesday 3<sup>rd</sup> September 2024 Members considered a report alongside the Levelling Up and Regeneration Act 2023, and Guidance issued by the Department of Levelling Up, Housing and Communities to determine the fees to be charged for the grant and renewal of a Pavement Licence.

The recommendation to set a fee was agreed and resolved by the Committee. However, the actual fee to be set could not be agreed, resulting in an Urgency Decision being required under S035 of the Council's Constitution.

The Urgency Decision was agreed on the 9<sup>th</sup> October 2024 and as per S035 of the Council's Constitution is being reported back to this Committee.

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### **This report supports the Council's priority of:**

Protecting and enhancing our environment. Financial prudence and sustainability. A thriving economy.

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## **Recommendation to Committee:**

It is recommended that the Members of the Committee note the contents of this Report.

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### **Reason for recommendation:**

Agreement to set a fee for the Grant and Renewal of a Pavement Licence was resolved at the Committee, held on the 3<sup>rd</sup> September 2024. An urgency decision was subsequently required to ensure that the Council recovers as much of the cost of providing the service as possible. In accordance with SO35 of the Council's Constitution, that Urgency Decision is now being reported back to the Community Services Committee.

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### **Introduction and background**

- 1.1 On 3<sup>rd</sup> September 2024, Members considered a report alongside the Levelling Up and Regeneration Act 2023, and Guidance issued by the Department of Levelling Up, Housing and Communities to determine the fees to be charged for the grant and renewal of a Pavement Licence.
- 1.2 The recommendation to the Committee was that the fees be set at the maximum of £500 for the grant and £350 for the renewal of a pavement licence to achieve as full a cost recovery as possible without drawing on the public purse and being subsidised by the Council Tax payers of the Council.
- 1.3 Whilst Committee agreed to set a fee for the grant and renewal of a pavement licence, it could not agree to the level of fee to be set.
- 1.4 To resolve this, a decision under urgency powers was requested to ensure compliance with the changes to the legislation and to ensure as much of the cost of providing the service was recovered. A copy of the urgency decision is attached at Appendix A.
- 1.5 The grant and renewal of a pavement licence attracts a fee, which must be considered reasonable in ensuring that there is no financial burden on the Council, within the constraints of the maximum amount chargeable. The Service tested this against the time involved in dealing with licences and deems the maximum amount to be proportionate and justifiable.
- 1.6 Following the urgency decision the proposed fee of £500 for the Grant of a Pavement Licence and £350 for the renewal of a Pavement Licence was adopted by Council on the 17<sup>th</sup> October 2024.
- 1.7 The £350 renewal fee will be implemented from the 1<sup>st</sup> January 2025, with the fee held at £200 for a two-year licence (equivalent to £100 per year) until 31<sup>st</sup> December 2024.

- 1.8 The Licensing Committee determined on Wednesday 2<sup>nd</sup> October 2024, that the duration of a Pavement Licence once granted or renewed will be 2 years.

## **Relevant Issues**

- 2.1 Any fee structure must be charged at a cost recovery rate which is the recognised process for charging. The officer time and costs can and should be recovered through the approved fees setting process. The Council must not set the fee so high that it makes a profit from the Pavement Licence scheme.
- 2.2 Where businesses are in Caterham and affected by the Croydon Road works, the Council has agreed to reimburse Pavement Licence fees. There are 3 such businesses.

## **Consultation**

- 3.1 There has been no consultation required in relation to the content of this report, other than that required under SO35.

## **Key implications**

### **Comments of the Chief Finance Officer**

- 4.1 The grant and renewal of a Pavement Licence attracts a fee, which must be considered reasonable in ensuring that there is no financial burden on the Council, within the constraints of the maximum amount chargeable. The Service has tested this against the time involved in dealing with licences and deems the maximum amount to be proportionate and justifiable.
- 4.2 It should be noted that if no fee is approved by the Council, the Authority would still have to process applications as they were submitted and issue licenses but for £nil charge. This would place an additional cost burden on the Council financially and in respect of Officer time.
- 4.3 The detailed financial implications are set out in Appendix A.

### **Comments of the Head of Legal Services**

- 5.1 The Council has a duty to provide for the issuing of Pavement Licences under the relevant provisions of the Business & Planning Act 2020 (the Act), as amended by the Levelling Up Act 2023.
- 5.2 Pavement Licences are covered by the Provisions of Service Regulations 2009 (as amended) and Regulation 18 requires that fees charged in relation to authorisations must be proportionate to the effective costs of the

process. The proposed fees must recover the Council's costs in relation to the licensing process and cannot be used as an economic deterrent or to raise funds.

- 5.3 When determining pavement licence applications, the Council must have regard to the Guidance issued by the Secretary of State.
- 5.4 Paragraph 2.1 of the Guidance states that to help support local businesses and give them more certainty, the expectation is that local authorities are pragmatic and will grant licences for the maximum period of 2 years, unless there are good reasons for granting a licence for a shorter period such as plans for future changes in use of road space.
- 5.5 There is no statutory right of appeal in relation to the Council's decision in relation to a pavement licence application.

## **Equality**

- 6.1 S.149 of the Equality Act 2010 places a duty on local authorities to have due regard to the need to eliminate unlawful discrimination, to advance equality of opportunity between people who share a protected characteristic and to encourage good relations between those who share a protected characteristic and those who do not. The Council has had due regard to this duty when setting the fees and specifying the conditions which should be attached to the pavement licence.
- 6.2 When determining applications, the licensing authority will give due regard to the public and highway safety of other highway users in line with all the criteria it will take into account in determining whether or not an application should or should not be granted. The statutory conditions also take account of the needs of persons with mobility and visual impairments.

## **Appendices**

Appendix 'A' - Urgency Decision taken under the Council's Constitution

## **Background papers**

Community Services Committee – 3<sup>rd</sup> September 2024  
Council meeting – 17<sup>th</sup> October 2024

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