

APPENDIX A

Chief Executive Urgency Decision

This form is to be used for the purposes of recording the Chief Executive’s agreement to proceed with an urgency decision. The form should be signed by the EMT Officer prior to submission to the Chief Executive.

Your Name	Aneurin Hughes
Job Title	Senior Licensing Officer
Brief description of the matter	<p>Introduction</p> <p>This Urgency decision proposes to set a fee in relation to the grant and renewal of a Pavement Licence, in the absence of an agreed fee at Community Services Committee on 3rd September.</p> <p>The existing £100 cannot stand as it related to the previous statutory charge, which has expired and which did not cover the Council’s costs in providing the licences.</p> <p>This urgency decision clarifies information provided at Committee, and provides further information, particularly on the Council’s financial context, the duration of the licence and the cost of the licence for new and existing applicants. Based on that, Officers recommend that Group Leaders support the charges initially put to the Committee.</p> <p>However, in order to minimise impact on existing licence holders (of which there are 8), it is proposed that the renewal fee be held at £200 for a two-year licence until the 31st December 2024. This will allow renewal at £100 per year, in line with the current costs.</p> <p>Within the report it was recommended by Officers that the fee be set at the maximum allowable (£500 for the grant and £350 for the renewal) to ensure the Council achieves as full a cost recovery as it can without drawing on the public purse and being subsidised by the Council Tax payers of the District. Although the maximum allowed, this does not cover the Council’s costs, as set out below.</p> <p>Financial Context</p> <p>On the 26th September 2024, S&R Committee considered the Council’s Medium-Term Financial position, and recommended that a number of principles be approved by full Council to provide a sustainable Medium-Term Financial Strategy (MTFS). Whilst this context was provided after the Community Services Committee, it nevertheless provides important context to the decision on Pavement Licence Fees.</p>

The Council faces a financial challenge of £4m (30%) over the MTFS period:

- o A savings target of £1m per year, every year, will be needed to balance the MTFS.
- o If no savings were made, funding would fall short of requirements by £1m in 2025/26, £2m in 2026/27 and so on, with a gap of £4m per year after four years.
- o The Council is legally required to set a balanced budget, and so savings are inevitable. The Council cannot rely on reserves or one-off funding to meet this challenge.
- o If no action was taken, the Council's General Fund would be exhausted by the end of 2026/27.

The challenge can be met, with strong financial resilience and a sound track record:

- o Financial resilience has been growing since 2021/22. Key elements of resilience are a £445k annual contingency, with £721k brought forward, and a £200k Service Capacity Fund. General Fund Reserves have been increased to £3.0m.
- o The Council has delivered a savings plan averaging £1.1m per year for the last three years, demonstrating that a challenge of this magnitude can be met, and has been met before.

Financially prudent and well-reasoned decision making is critical:

- o The Council has made a series of prudent financial decisions since 2021/22, which have grown resilience and redirected resources to front-line service delivery.
- o All future decisions must be taken in the context of the financial position and move the Council closer to a balanced MTFS. Once Committee budget envelopes are established, any decision to commit further spend must be met by a proposal for funding it.
- o Difficult decisions will be required, including a reduction in discretionary spend, increased fees and a full review of the services the Council can provide.

Relevant principles agreed by Strategy and Resources are as follows:

2. Revenue generation – the Council will seek to maximise its income from fees and charges.
3. Fees and charges – these will be set to reflect the true costs of providing the service, including both direct costs and a contribution to other costs. Any exceptions to this general principle should be explicitly agreed, along with the rationale for this being the case.

Previous Fees:

The previous fee was set in statute at £100 for up to a year. Licences have a fixed termination date end of Sept so potentially some licences may have a valid period of less than a year.

Proposed Fees:

The proposed fee is for new licences at £500 for a two-year licence and renewal at £350 for a two-year licence.

The overall cost to the Council is £745.36 for a new application and £592.73 for a renewal.

As licences are valid for two years this would work out at a daily charge of 68p for a new application and 48p for a renewal application.

For the 8 current licence holders – it is proposed that if licences are renewed by 31st December 2024 the annual price of the licence will effectively be unchanged at £200 for two years (i.e. £100 per year).

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.

Background:

On the 3rd September 2024, the Community Services Committee considered a report alongside the Levelling Up & Regeneration Act 2023, and Guidance issued by the Department of Levelling Up, Housing & Communities to determine the fees to be charged for the Grant and Renewal of a Pavement Licence.

Under Schedule 22 of the LURA2023, the application fee for the grant of a pavement licence that a local authority may charge is a maximum of £500. The application fee for the Renewal of a pavement licence that a local authority may charge is a maximum of £350. Each authority has discretion to set its fees up to the maximum allowable.

Previously, the fee to be charged was set by the Government to aid business following the pandemic and was set at £100. This did not cover the cost to the authority for dealing with and processing an application for a pavement licence and then enforcement of the licence.

The Business and Planning Act 2020 (temporary legislation) introduced a fast-track process for businesses to obtain a temporary pavement licence for the placement of furniture such as tables and chairs on the highway (including footpaths and pavements) adjacent to that premises for the purpose of selling or consuming food and/or drink.

It was designed to make it easier for premises serving food and drink to seat and serve customers outdoors, maximising their ability to trade, assisting them to operate safely and promoting economic recovery in response to the impact of the global COVID-19 pandemic.

The temporary legislation was due to expire at the end of September 2024, however, the government has made the scheme permanent, with some amendments, through the Levelling Up & Regeneration Act 2023 (LURA2023) which received royal assent last year and came into force on Sunday 31 March 2024.

An amended fee has also been prescribed in the legislation. Previously the fee for a temporary pavement licence was £100. This has now increased and capped as follows: -

- New Application – Maximum £500
- Renewal Application – Maximum £350

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 street trading scheme.

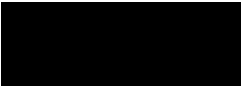

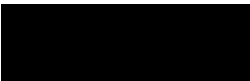
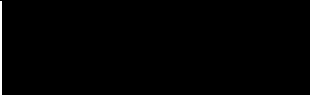
The Local Government Association recently produced updated guidance in respect of locally set fees for the Licensing functions. In this document it is confirmed that: -

- Provision of Service Regulations 2009 under UK law – **the fees received under one licensing regime must not subsidise fees charged under another**; any fees are required to be easily accessible online, including the ability to make payments online.
- All councils should ensure that they have individual, discrete cost-calculations for each of the licensing regimes that they operate.
- To ensure that councils can promote growth and protect the public, there is a need to ensure that Licensing and wider regulatory regimes are **adequately resourced**. This requires funding, and

	<p>it is an accepted principle that Licensed activities should be paid for by those benefitting from the licensed activity, rather than drawing on the public purse.</p> <ul style="list-style-type: none"> • The principles of <u>no profit-making, no cross subsidies between licence types or leakage to the General Fund</u>, taking forward deficits and surpluses when deciding the following years’ fee levels. This can be logically extended to mean that the fees charged under one licensing regime must not subsidise fees charged under another. • Councils that <u>divert fees income</u> from the relevant Licensing scheme to fund other licensing work, or to fund other council activities, will be <u>breaking the law</u>. • <i>Hemming v Westminster</i> – other matters determined by earlier hearings, such as the need to review fees annually and the requirement for Councils to <u>ring-fence income from Licensing fees</u> so that any surplus or deficit is carried forward to the next year’s budget, were not contested. • Councils must not use fees covered by the Regulations to make a profit or act as an economic deterrent to deter certain business types from operating within an area. • Where fees charged result in a surplus, both <i>Hemming V Westminster</i> and <i>Cummings v Cardiff</i> stated that this surplus <u>must</u> be used to reduce the fees charged the following year. <hr/> <p>It is recommended that the fee for the Grant of a Pavement Licence be set at £500 and that the fee for the Renewal of a Pavement Licence be set at £350. In both cases the licences would have a two-year duration.</p> <p>The £350 renewal fee will be implemented from 1st January 2025, with the price held at £200 for a two-year licence (equivalent to £100 per year) until 31st December 2024.</p> <p>The estimated cost to the Council of implementing the new fee from 1st January, instead of immediately, is £750 over two years (i.e. 5 renewals unaffected by Croydon Road x £150 difference).</p> <hr/>

<p>Comments from Head of Legal / Monitoring Officer</p>	<p>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.</p> <p>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.</p> <p>When determining pavement licence applications, the Council must have regard to the Guidance issued by the Secretary of State.</p> <p>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.</p> <p>There is no statutory right of appeal in relation to the Council's decision in relation to a pavement licence application.</p>
<p>Comments from S151 Officer</p>	<p>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.</p> <p>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.</p> <p>The detailed financial implications are set out above.</p>
<p>Is the matter urgent? If so, why.</p>	<p>Following the introduction of the Levelling Up and Regeneration Act 2023, there is no current fee structure in place for Pavement Licences. Existing licences will expire on 30th September 2024.</p>

<p>Authority</p>	<p>The Council's Constitution contains the following urgency provision:</p> <p style="text-align: center;">No. 35</p> <p style="text-align: center;">GENERAL URGENCY PROVISION</p> <p>"Notwithstanding anything in this Constitution, the Chief Executive and other Management Team members shall be authorised to take decisions on the grounds of urgency regarding matters which would otherwise be reserved for determination by a Committee or the Council. A matter can be deemed urgent if, in the reasonable opinion of the Management Team member concerned, a delay would seriously prejudice the interest of the Council or of the public and it is not practicable to convene a quorate meeting of the relevant decision-making body in sufficient time to take the decision.</p> <p>The Management Team member concerned shall also:</p> <ul style="list-style-type: none"> • advise and seek the views of the Political Group Leaders and the Chair of the appropriate Committee at the earliest opportunity; and • report the matter to next scheduled meeting of the appropriate Committee." <p>.</p>
<p>Are there any key risk factors for example organisation reputation, financial or political interest?</p>	<p>The legislation surrounding the licensing of removable furniture on the highway allows local authorities some flexibility to address local considerations, however, the Council is obliged to conduct its pavement licence function in a fair and equitable manner. Any indication of preferential treatment for one premises over another could place the Council in jeopardy and subject to legal challenge and a substantive costs order.</p> <p>As mentioned above, in accordance with the Local Government Associations Guidance on locally set licensing fees, it is an accepted principle that those who benefit from the system (such as licence holders) should cover the cost of it. Locally set fees are a vital means of ensuring both that full costs can be recovered by each and every council, reducing the risk of subsidy from local taxpayers, and that businesses do not pay more than they should.</p> <p>If no fee is approved by the Council, the Authority would still have to process applications as they were</p>

	<p>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.</p> <p>A legal challenge could be made to an authority's use of local taxpayers money to fund business activities where the fee has not been set to achieve as much cost recovery as possible.</p>
Any additional information.	
Signed by EMT Officer	
Date	
Signed by the Head of Legal and Monitoring Officer	
Date	09 October 2024
Signed by the Chief Finance Officer	
Date	09 October 2024
Signed by the Chief Executive / Deputy Chief Executive	 
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