

To: General Purposes Licensing Committee
Date: Monday 9 February 2026
Report of: Director of Planning and Regulation
Title of Report: Miscellaneous Licensing Update Report

| Summary and recommendations | |
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| Decision being taken: | To review of feasibility study on smoke free pavement licensing as requested. |
| Key decision: | No |
| Cabinet Member | N/A |
| Corporate Priority: | Enable an Inclusive Economy; Support Thriving Communities |
| Policy Framework: | Pavement Licensing |

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| Recommendation(s): That General Purposes Licensing Committee resolves to: |
| <p>1. Agree to retain the existing arrangements with regards to smokefree pavement licence conditions. A full smokefree pavement licensing condition is not recommended at this time due to the following factors:</p> <ul style="list-style-type: none">• Significant enforcement and resource pressures,• Forthcoming Local Government Reorganisation, and• The risk of creating inconsistency and inequity for businesses,• That the current national-compliant arrangements remain proportionate, workable, and enforceable. |

| Information Exempt from Publication |
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| Not applicable |

| Appendix No. | Appendix Title | Exempt from Publication |
|---------------------|----------------------------|--------------------------------|
| Appendix 1 | Risk Register | No |
| Appendix 2 | Equality Impact Assessment | No |

Introduction and background

1. At the meeting of the General Purposes Licensing Committee in February 2025, the committee requested a report from officers outlining the feasibility of increasing restrictions to smoking in areas covered by a pavement licence.
2. This report is in response to that request.

Pavement Licensing

3. The Business and Planning Act 2020, as amended by the Levelling Up and Regeneration Act 2023, governs pavement licensing. Section 5 of the Act allows local authorities to impose conditions on licences, including those related to smoking.
4. The Act makes provision for National Conditions. The National Conditions require “reasonable provision” for smoke-free seating and allowing smoking seating. The aim being to provide greater choice and so both smokers and non-smokers can sit outside.
5. Oxford City Council currently requires signage and separation of smoking/non-smoking areas in line with the National Conditions.
6. There is scope to strengthen these National Conditions through a policy which goes beyond the National Conditions. The Business and Planning Act S5(1): “A pavement licence may be granted by a local authority subject to such conditions as it considers reasonable.” Section 5(2): “A local authority may publish conditions subject to which it proposes to grant pavement licences.”
7. Further, Section 5(8)(b) empowers the Secretary of State to specify national conditions and determine whether they apply in addition to or instead of local conditions. However, official guidance clarifies that local conditions take precedence where they cover the same subject matter:
8. Government Guidance to Pavement Licences state: Where a local authority sets a local condition that covers the same matter as set out in national conditions, then the locally set condition would take precedence over the national condition where there is reasonable justification to do so.

9. This means councils can go beyond the national requirement for “reasonable provision” of smokefree seating and instead mandate 100% smokefree seating as a local condition as part of a local licensing policy provided it is supported by evidence, such as public health data or/and consultation feedback. It must be applied consistently and clearly stated in the licensing policy/conditions.

Consultation Requirements

10. Whilst pavement licence applications are mandatorily consulted upon following application (S2(4-7)), no legally mandated consultation requirement exists for the Council when setting policy or local conditions, although any conditions should demonstrate reasonable justification and be supported by evidence. However, best practice encourages consultation to support defensibility.
11. Any consultation should involve relevant stakeholders, including: the current consultees on pavement licences, current pavement licence holders, smokefree officers at the local authority.

Public Health Pressures

12. Action on Smoking and Health (ASH), a lobby group which aims to reduce smoking as much as possible states as follows:
 - a. “Making seating entirely smokefree is clear, simple, easy to implement and enforce.”
 - b. “If smoking is not prohibited, pavement areas will not become family-friendly spaces.”
 - c. “59 - 60% of adults in England support banning smoking in outdoor seating areas of restaurants, pubs, and cafes”
13. The Local Government Association on making Pavement Licence areas 100% smoke free provides as follows:
 - a. “It will set a level playing field for hospitality venues across the country, ensure outdoor drinking and dining is a family friendly environment and have the added public health benefit of protecting people from unwanted second-hand smoke”
 - b. “Prohibiting smoking in an area where a pavement licence has been granted will also make the legislation clearer for businesses and easier for licensing authorities to enforce”

Benchmarking Other Councils

14. Councils that have implemented 100% smokefree pavement licence conditions include: Liverpool, Manchester, Newcastle, Durham, Northumberland, Middlesbrough, North Lincolnshire, Brent, Stevenage, South Tyneside and North Tyneside.

15. These are the only councils which have done so.

Smokefree during daylight hours only

16. An alternative to a full smoke-free policy is to restrict smoking in pavement licence areas only during daylight hours, reverting to the existing condition (which allows some smoking) during evenings and overnight. This possibility was discussed during the February meeting. I've not been able to discover any local authorities who have implemented limited-time restrictions.

Table of Potential Positive and Negatives of a Daylight Smokefree Policy

| Positives | Negatives |
|---|--|
| Protects families and vulnerable groups during peak daytime hours | Complex enforcement due to time-based rules |
| Reinforces public health messaging when visibility is highest | Mixed messaging may undermine smokefree goals |
| Allows flexibility for businesses during quieter evening periods | Limited health impact during evening hours |
| May serve as a transitional step toward full smokefree policy | Requires clear signage and communication |
| Easier to monitor during daytime when officers are more available without out of hours work | Potential for disputes and confusion among patrons and staff |

17. It is a more complex undertaking, and the moving definition of “daylight hours” would require elegant drafting to avoid enforcement complexity.

Implementation

18. Should the Committee choose to advance a smokefree policy the necessary steps should follow the following framework:

- a. Consultation, including stakeholders or other justifying evidence stimulating a policy update
 - b. Legal review
 - c. Stakeholder engagement and communication
 - d. New licences issued with smokefree conditions, existing licences varied upon renewal
 - e. Monitoring and enforcement
19. There is no mechanism to alter the conditions of a Pavement Licence once it has been issued unless there is an enforcement matter, or the holder voluntarily applies to alter the conditions.

Challenges

20. Balancing Interests: Public health vs. business concerns and loss of business.
- a. Conditions must be defensible
 - b. Resource allocation: enforcement may require additional capacity if it is to be effective
 - c. Must be applied universally but beer gardens and other areas to which pavement licensing doesn't apply will not be affected by it and smoking can continue. This may generate a perception of unfairness and confusion, and inequality between businesses who have and don't have outside areas on private land.

Alternative Options

21. The Tobacco and Vapes Bill specifically exclude hospitality venues from its scope having been initially included, the matter has therefore been considered by parliament. Hospitality venues are therefore not currently included in any national outdoor smoking ban.
22. Most local authorities retain a mixed smoking and non-smoking policy regarding pavement licences; there is no legislative requirement to ban smoking in pavement licence areas and the decision for this is left entirely to the discretion of the local authority.
23. The options are to either; begin the process of introducing a 100% smoking ban in pavement licence areas, or to maintain the current position. The conclusion to this report outlines some of the challenges associated with introducing a 100% smoking

ban, which may not be compatible with current available resources, or create a level playing field across the city's businesses.

Financial implications

24. The costs will have to be absorbed into existing budgets. There isn't currently additional resource available for an increase in enforcement capacity if that is desired.

Legal issues

25. The enforcement of legal requirements made under national legislation is subject to the Council's Corporate Enforcement Policy. Licensing officers have regard to this Policy for example in using education, encouragement, and enforcement to uphold statutory requirements and encourage good practice.

Equality impact

26. There are no adverse impacts anticipated on anyone with protected characteristics.

27. The Council has a Public Sector Equality Duty under the Equality Act 2010 to have due regard to the need to:

- a. Eliminate discrimination, harassment and victimisation and any other conduct that is prohibited by or under the Act;
- b. Advance equality of opportunity between people who share a relevant protected characteristic and those who don't share it;
- c. Foster good relations between people who share a relevant protected characteristic and those who do not (which involves having due regard to the need to tackle prejudice and promote understanding).

28. The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, and sexual orientation.

Carbon and Environmental Considerations

29. There are no environmental considerations arising directly from this report overall, though environmental impact and preventive measures form part of the Council's Street Trading Policy.

Conclusions

30. A full ban would require active monitoring and enforcement, for which no additional staffing or budget is available. Implementing such a condition without the capacity to enforce it consistently creates risk, inconsistency, and the potential for challenge.
31. The upcoming Local Government Reorganisation will place further pressure on resources and will benefit from policy stability; introducing a new, complex licensing condition now may lead to duplication of work or future re-alignment across the new authority.
32. Only a small number of councils nationally have adopted full bans, and applying a restriction solely to pavement licence holders—while smoking remains permitted in private outdoor areas—would create inequity and confusion for businesses.
33. Oxford's current policy already meets national requirements by providing separated smoking and non-smoking areas and is proportionate and workable within existing resources.
34. The Committee may instead wish to maintain the existing arrangements and review the matter again once the organisational landscape and resource position are more stable following reorganisation.

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Background Papers:

1. GOV.UK Pavement licence guidance [Pavement licences: guidance - GOV.UK](#)
2. ASH Briefing for Local Authorities – June 2023: [ASH-Briefing-for-councils-on-smokefree-pavement-Licences-June2023-FINAL.pdf](#)
3. ASH briefing for Smokefree England [Smokefree-18-years-on-pdf.pdf](#)
4. Oxford Pavement Licence Conditions: [Microsoft Word - Standard Pavement Licence Conditions - FINAL 09.04.21](#)

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