



HILLINGDON
LONDON



CABINET

To all Members of the Cabinet:

Date: THURSDAY, 23 MAY 2024

Time: 7.00 PM

Venue: COMMITTEE ROOM 6 -
CIVIC CENTRE, HIGH
STREET, UXBRIDGE UB8
1UW

**Meeting
Details:** Members of the Public and
Media are welcome to attend
this meeting and observe the
public business discussed.

This meeting will also be
broadcast live on the
Council's YouTube Channel.

Ian Edwards, Leader of the Council
(Chair)

Jonathan Bianco, Deputy Leader of the
Council & Cabinet Member for Property,
Highways & Transport (Vice-Chair)

Martin Goddard, Cabinet Member for
Finance

Douglas Mills, Cabinet Member for
Corporate Services

Susan O'Brien, Cabinet Member for
Children, Families & Education

Jane Palmer, Cabinet Member for Health
& Social Care

Eddie Lavery, Cabinet Member for
Residents' Services

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at www.hillingdon.gov.uk or use a smart
phone camera and scan the code below:



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Putting our residents first

Lloyd White
Head of Democratic Services
London Borough of Hillingdon,
Phase II, Civic Centre, High Street, Uxbridge, UB8 1UW

Urgency Notice

Item 14 – New Pavement Licensing Regime 2024

Item 15 - Residential Property Acquisitions Programme 2024/25

In accordance with the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012, 28 clear days notice of a decision on these reports, to be considered by Cabinet on 23 May 2024, was not practicable.

This report has also been circulated less than 5 working days before the Cabinet makes any decision on the matter and will only be considered if approved at the meeting by the Chair (Leader of the Council).

Under special urgency rules in the Council's Constitution, the Chair of the Residents' Services Select Committee has kindly agreed that a decision on both matters can be considered at this Cabinet meeting because they are urgent and cannot reasonably be deferred.

The reason for urgency are:

- Item 14 – New Pavement Licensing Regime 2024 - in order for the Council to enact the new legislation expediently and provide updated licence conditions.
- Item 15 - Residential Property Acquisitions Programme 2024/25 - due to the imperative need to secure affordable housing. This opportunity will support the Council in meeting its statutory responsibilities and mitigate the impact on the Council's budget.

Notice of the Council's intention to hold this meeting (part in private) is set out on the main Cabinet Agenda A for this meeting.

London Borough of Hillingdon
Issued: 22 May 2024

Agenda

Cabinet Reports - Part 1 (Public)

14 New Pavement Licensing Regime 2024 (Cllr Eddie Lavery)

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Cabinet Reports - Part 2 (Private and Not for Publication)

The report in Part 2 of this agenda is not for publication because it involves the disclosure of information in accordance with Section 100(A) and Part 1 of Schedule 12 (A) to the Local Government Act 1972 (as amended), in that it contains exempt information and that the public interest in withholding the information outweighs the public interest in disclosing it.

- 15** Residential Property Acquisitions Programme 2024/25
(Cllr Jonathan Bianco, Cllr Martin Goddard & Cllr Eddie Lavery)

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NEW PAVEMENT LICENSING REGIME 2024

Cabinet Member(s)	Cllr Eddie Lavery
Cabinet Portfolio(s)	Cabinet Member for Residents' Services
Officer Contact(s)	Richard Webb – Place Directorate Daniel Ferrer – Place Directorate
Papers with report	Annex 1 - Letter from DLUHC Annex 2 – Changes to pavement licence conditions

HEADLINES

Summary	<p>The licensing provisions of the Levelling Up and Regeneration Act 2023 came into force on 31 March 2024 and amended the pavement licensing provisions contained within the Business and Planning Act 2020.</p> <p>The Council is required to set new fees and update licence conditions so that Officers can fully implement the new licensing regime.</p>
<p>Putting our Residents First</p> <p>Delivering on the Council Strategy 2022-2026</p>	<p>This report supports our ambition for residents / the Council of: An efficient, well-run, digital-enabled council working with partners to deliver services to improve the lives of all our residents</p> <p>This report supports our commitments to residents of: A Thriving Economy</p>
Financial Cost	The cost of administering the licensing regime will be met through fees and charges.
Relevant Select Committee	Residents' Services
Relevant Ward(s)	All

RECOMMENDATIONS

That the Cabinet:

- 1) Note the new pavement licensing provisions from the Levelling-Up and Regeneration Act 2023, and as set out in Annex 1.
- 2) Authorise new pavement licence fees of £350 for renewals and £500 for new applications.

- 3) **Authorise Officers to make amendments to the standard licence conditions to reflect the legislative changes required, as in Annex 2, and apply a duration of two years for pavement licences.**
- 4) **Note that when reviewing pavement licence applications officers will ensure that businesses make reasonable provision for non-smokers to use outdoor seating space and that smoking and non-smoking areas are adequately separated.**

Reasons for recommendation

There is an imperative to approve the new fees to enable the Council to continue to administer the Pavement Licensing functions of the Council following the legislative changes introduced on 31 March, and importantly, ensure the Council can respond to local businesses who are applying for such licences.

The Levelling Up and Regeneration Act 2023 (LURA) came into force without specific legislative provisions to set fees for pavement licences or a commencement date for the changes to the pavement licence regime. The Council was notified of the commencement of the new pavement licence provisions and the new statutory guidance via a letter from the Department for Levelling Up Housing and Communities on 2 April (Appendix 1).

Provision of outdoor seating by businesses on the highway is intended to be for all customers. In order to meet the Council's Strategy commitment to ensure people in the Borough can lead healthy, active and independent lives the Council will require that reasonable space is provided on any licensed outdoor seating for people who do not smoke, adequately separated from any seating where smoking is permitted. The needs of non-smokers to be able to use the seating provided without interference from smoke will be prioritised over provision of space for smokers.

Alternative options considered / risk management

There are no alternative options. If the Council does not set licence fees under this regime, applicants cannot apply for pavement licences and the Council cannot meet its statutory obligations.

Democratic compliance / previous authority

Officers advise that this matter be deemed urgent, in order for the Council to enact the new legislation expediently and provide updated licence conditions.

Cabinet authority is required to make or amend fees and charges. Additionally, interim delegations will be put in place by the Director of Community Safety & Enforcement to relevant officers to discharge these new statutory responsibilities and will be made permanent through changes to the Council Constitution (Chapter 8 – Licensing Decisions) and thereby Officer Scheme of Delegations in due course.

Select Committee comments

None at this stage.

SUPPORTING INFORMATION

1. The Levelling Up and Regeneration Act 2023 (LURA) amends the pavement licensing provisions contained within the Business and Planning Act 2020 (BPA). The BPA was initially brought in as an emergency piece of legislation in July 2020 in response to the COVID pandemic, and permitted a quicker, cheaper, and streamlined service for premises such as pubs, restaurants and cafes to apply to place tables, chairs and other relevant furniture outside their premises on the pavement. Applicants were issued a 'Pavement Licence' under the BPA 2020.
2. The fee for a Pavement Licence under the BPA was capped at £100 in recognition for the financial hardships faced by many hospitality businesses during the Covid period. Hillingdon formally decided to process these applications initially for free and then started to charge £100 at the beginning of the 2023/24 financial year.
3. In 2023/24, the Licensing Team received 106 applications for 12-month pavement licenses, resulting in £10,600 of fee income.
4. Before the BPA 2020 came into force, the Council regulated this activity under street trading legislation, the London Local Authorities Act 1990, resulting in 'Tables and Chairs' licences being issued. Fees under that legislation depended on the space provided and ranged from (for 2021/22) £561.68 for a 1 metre space to £661.68 for 3 metres.
5. The LURA 2023 introduces a permanent pavement licensing regime and has made amendments to the process, consultation requirements and decision making. The main changes from the LURA are summarised below:
 - a) The Guidance states that fees will be set locally, and it is for the licencing authority to determine the appropriate charge. Fees are capped at a maximum of £500 for first time applications and £350 for renewals.
 - b) Extending the public consultation period and council determination period from seven days to 14 days.
 - c) Extending the maximum duration of pavement licences from one year to two years. The length of a licence is however at the discretion of the local authority.
 - d) Provide that pavement licences can also be amended by the local authority with the consent of the licence holder if it is considered that the conditions on the licence are not being met.
 - e) The new guidance makes clear that a minimum width of 2,000mm of clear space should be provided between the obstacle and the edge of the footway. However, if this is not feasible due to physical constraints, then a minimum width of 1,500mm could be regarded as the minimum acceptable distance ('No Obstruction' National Condition).
 - f) Existing licence holders can retain their licences granted under the BPA temporary regime until the expiration date on their licence.
 - g) The Guidance states that Local authorities should consider consulting with Police Licensing Teams, Designing Out Crime Officers and Counter Terrorism Security Advisors for relevant advice.

- h) New enforcement powers are introduced, which include the serving of a notice where conditions are not being complied with, amending a licence, revoking a licence in certain circumstances and removing the furniture from the public highway.
 - i) In terms of Delegated Authority, the Guidance states that under section 101 of the Local Government Act 1972, local authorities may arrange for the discharge of their functions by a committee, a sub-committee, or an officer of the authority, or by any other local authority. This means that the executive of a local authority can delegate decisions to a committee, or officer of the authority.
6. The Government amended the statutory guidance in relation to Pavement Licensing in April 2024; [Pavement licences: guidance - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/pavement-licences-guidance)
7. The new guidance amends the national pavement licensing conditions relating to obstruction and Smoke Free seating as set out below:

No Obstruction

Clear routes of access along the highway must be maintained, taking into account the needs of disabled people, and the recommended minimum footway widths and distances required for access by mobility impaired and visually impaired people as set out in Section 3.1 of Inclusive Mobility published by the Department for Transport.

Section 4.2 of Inclusive Mobility sets out that footways and footpaths should be as wide as practicable, but under normal circumstances a width of 2,000mm is the minimum that should be provided. If this is not feasible due to physical constraints, a minimum width of 1,500mm could be regarded as the minimum acceptable distance between two obstacles under most circumstances.

Smoke-Free Seating

Reasonable provision for seating where smoking is not permitted must be provided. Clear 'smoking' and 'non-smoking' areas, with 'no smoking' signage displayed in designated 'smoke-free' zones will be provided in accordance with Smoke-free (signs) Regulations 2012.

No ash trays or similar receptacles to be provided or permitted to be left on furniture where smoke-free seating is identified.

Licence holders should provide a minimum 2M distance between non-smoking and smoking areas, wherever possible.

It should be noted that Section 4.2 of the Government guidance states that, "The national smoke-free seating condition seeks to ensure customers have greater choice, so that both smokers and non-smokers are able to sit outside" and that "It is important that businesses can cater to their customers' preferences". The guidance goes on to explain that the smoking condition requires a licence-holder to make reasonable provision for seating where smoking is not permitted. This means that where businesses provide for smokers, customers will also have the option of sitting in a non-smoking area.

In relation to the setting of conditions, Section 5.4 of the Guidance states,

“...local authorities may impose reasonable conditions whether or not they are published upfront. There is an expectation these will be supported by a clear justification for the need of a condition, such as evidence raised during the consultation, which is in addition to any published local conditions...Conditions imposed by the local authority should be proportionate and tailored to the applicant’s premises.

8. Where a premises cannot provide reasonable and properly separated provision for non-smokers, Officers will consider the use of bespoke and specific conditions to ensure that any pavement tables and chairs are provided for the use of non-smokers only. Each case will be assessed on its own merits.
9. A full list of amendments to conditions is contained in Appendix 2.

Financial Implications

This report proposes the implementation of amended licence fees for pavement licences of £500 for first time applications and £350 for renewals. As permitted under the LURA, it is also recommended that the Council extends the maximum duration of pavement licences from one year to two years.

As referenced under the Supporting Information paragraph above, 106 pavement licences at £100 each and with a one-year duration were issued in 2023/24, equivalent to annual income of £10,600. On an annualised basis, 106 renewals at the proposed new rate of £350 for a two-year period, would result in an annual equivalent income of £18,550 (an uplift of £7,950). Licences issued to any new applicants, at £500, would generate additional income.

At this stage, the impact of the amended fees on the volume of renewals and potential new applications is uncertain. £350 for a two-year renewal (£175 per year) reflects a 75% increase vs. the existing £100 one-year licence fee. Accordingly, if the changes are approved, income levels will be closely tracked via monthly budget monitoring, with any increases contributing to the Place directorate’s unallocated savings targets. Should permanent budgetary realignment be required, it will be addressed as part of the MTFP planning process.

RESIDENT BENEFIT & CONSULTATION

The benefit or impact upon Hillingdon residents, service users and communities?

The new legislation provides a permanent licensing regime for the placement of tables and chairs on the pavement. It also allows for a longer public consultation period for residents to comment on applications. It also allows licences to be issued for a longer period which will relieve the application burdens on businesses.

The regime offers certain safeguards for communities by allowing revocation of licences where licence holders have not adhered to the rules.

Consultation carried out or required

There is no requirement to consult on fees under the LURA.

CORPORATE CONSIDERATIONS

Corporate Finance

Corporate Finance have reviewed this report and concur with the Financial Implications set out above, noting the recommendation to authorise a new pavement licence fee in light of the new legislation, authorising officers to make amendments to standard licensing conditions.

Furthermore, it is noted that the revised fee will lead to additional income based on the current level of demand, however, there is a risk that demand will be impacted by the increased fee, with the budget monitoring process being the process to track this impact and report back to Cabinet, with any updates to be fed into future iterations of the Council's budget strategy.

Legal

As explained in the report the statutory provisions relating to pavement licences have now been made permanent by section 229 of the levelling up and regeneration act 2023 which has very recently come into force. Again, as mentioned in the report, the government has issued statutory guidance to local authorities in relation to pavement licences and the council can only depart from this guidance where there is reasonable justification for doing so on a case-by-case basis. An example would be if the management of a particular business caused nuisance to neighbours or the wider public. Further legal advice will be given as necessary on individual cases to ensure that the public interest is protected.

BACKGROUND PAPERS

[Levelling-Up and Regeneration Act 2023](#)
[Pavement licences: guidance - GOV.UK \(www.gov.uk\)](#)



2nd April 2024

Dear

**PERMANENT PAVEMENT LICENSING REGIME
LEVELLING UP AND REGENERATION ACT 2023 COMMENCEMENT**

On 31 March 2024, the pavement licensing provisions laid out in the Levelling Up and Regeneration Act 2023, were commenced. The provisions introduce a permanent pavement licensing regime in England to replace the temporary provisions introduced by the Business and Planning Act 2020. This permanent regime retains the key features of the 2020 regime, intended to streamline processing and reduce costs, but also incorporates some changes, outlined below, to ensure the long-term sustainability of the model.

Amendments set out in the LURA 2023

The LURA introduces several new pavement licensing provisions:

Firstly, the fee cap for a pavement licence application is increasing. It will no longer be capped at £100 but instead be capped at £500 for first time applications and £350 for renewal applications, subject to each local authority deciding the level of fee up to the cap. The increase and fee cap intend to balance the interests of businesses and local authorities.

Under the permanent regime, local authorities will now also be able to grant pavement licences for a length of their choosing up to a maximum of two years. As set out in the updated guidance, we encourage local authorities to grant businesses the maximum two years unless there is a good reason to do otherwise.

The 7-day consultation and 7-day determination periods provided under the temporary regime, will be extended to 14 days for each. This change has been made to reflect asks from local authorities to have a reasonable time to process applications; while balancing businesses' need for a quick determination; and the need of members of local communities, particularly those with disabilities, to have a sufficient time to input, in mind.

Finally, the new pavement licensing provisions under the LURA 2023 grants local authorities' new enforcement powers. From the commencement date, local authorities will now, with the consent of the licence-holder, be able to amend the licence in certain circumstances. Local

authorities will also be able to give notice to businesses who have placed furniture on the relevant highway without the required licence. If furniture continues to be placed on the highway, in contravention of the notice, the authority may remove and store the furniture, recover the costs from the business for the removal and storage of the furniture, and refuse to return the furniture until those costs have been paid. If within three months of the notice being served, the costs are not paid, the authority can dispose of the furniture by sale or other means and retain the proceeds.

Additional smaller changes in the guidance

Along with the amendments to the pavement licensing regime under the LURA 2023, we have made several minor changes to the guidance to clarify certain points within it and make it more comprehensive and considerate of the various groups affected by the regime.

We have clarified section 4.1 of the guidance, which sets out what local authorities, when considering the needs of disabled people, should assess when they set conditions, determine applications, and consider whether enforcement action is required. The previous guidance interpretation [Inclusive Mobility](#) was misleading, New guidance makes clear that under normal circumstances a width of 2000mm is the minimum that should be provided. In cases where this is not possible, a width of 1500mm could be regarded as the minimum acceptable distance. Though, local authorities should take a proportionate approach when measuring this.

In addition to this change we have also flagged that when considering the no obstruction condition licencing offices should be mindful of the cumulative impact of multiple pavement licences and the potential impact this could have on disabled pavement users.

Following feedback, we have provided more clarity on which types of furniture are permissible under this pavement licensing regime. Licences granted under this provision are exclusively for the use of furniture pertaining to the consumption of food and drinks, for example, tables and chairs. Other furniture, such as advertising boards, are not included. This furniture must be removeable.

Transitional Arrangements

The new pavement licensing provisions came into effect on the commencement date, 31 March 2024. Along with the renewals process introduced under the new regime, there are transitional arrangements in place to ensure the transition from the temporary regime to the permanent one is a smooth one for the entire sector.

Existing licence-holders can retain their licences granted under the temporary regime until the expiration date on their licence. After these existing licences expire, on or after 31 March 2024, businesses can reapply under the renewals process and be charged up to the maximum renewal fee of £350, subject to the local authority deciding the level of fee up to the cap.

Existing licences with no fixed end date will be extended for two years from the commencement date and licences that were deemed to be granted due to the local authority not being able to determine the application on time, will also be extended for two years from the commencement date.

Applications submitted to the local authority on or before 30 March 2024 but determined on or after 31 March 2024 will be subject to some of the arrangements of the temporary regime, namely the 7-day consultation and 7-day determination periods and the up to £100 application fee. However, they will benefit from the new maximum duration of up to two years.

Applications determined before 31 March 2024, will be subject to the new enforcement power under the permanent regime, which grants authorities the power to amend the licence in certain circumstances with the licence-holder's consent.

You can access the updated guidance, which outlines the changes and transitional arrangements, [here](#).

For any queries, do reach out to pavementlicensing@levellingup.gov.uk.

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Annex 2– Standard Conditions applicable to all Pavement licences

- ~~1. The licence holder shall ensure that they conform with the latest guidance on social distancing and any reasonable crowd management measures needed as a result of this licence being granted.~~
- ~~2. The licence holder shall ensure that a 'Covid Secure' risk assessment is carried out and reviewed regularly.~~
3. Permission to operate a pavement café does not imply an exclusive right to the area of public highway. The licence holder must be aware that the London Borough of Hillingdon Council and others (e.g. police, highways authority, statutory undertakers) will need access at various times (including emergencies) for maintenance, installation, special events, improvements etc or any other reasonable cause. This may mean that the pavement café will need to cease operating and/or be removed for a period of time. On these occasions there would be no compensation for loss of business.
4. Tables and chairs must not be placed in position outside of permitted times. When the licence is not in use, all tables and chairs and other furniture must stored securely inside a premises away from the highway.
5. London Borough of Hillingdon Council are empowered to remove and store ~~or dispose of~~ furniture from the highway, at the cost of the licensee, if it is left there outside the permitted hours, or should any conditions of the licence be ignored. The Council will not be responsible for its safekeeping.
6. The licence holder is not to make or cause to be made any claim the London Borough of Hillingdon Council in the event of any property of the licence holder becoming lost or damaged in any way from whatever cause.
7. An unimpeded pedestrian route must be maintained at all times for people wishing to use the footway.
8. Emergency routes to the premises and adjacent buildings must not be obstructed by the Pavement Licence, which should not, in normal circumstances, extend beyond the width of the premises frontage.
9. Tables and chairs should be of an approved type and should be kept in a good state of repair. Furniture should be placed so as not to obstruct driver sightlines, or road traffic signs. Placement of tables and chairs must allow pedestrians to use the footway parallel to the frontage of the premises. Care should be taken in the use of hanging baskets, awnings, protruding umbrellas etc. Alternative items may not be used without first seeking the written authority of the Council.
10. The licensee should ensure that the area operates in a safe and orderly manner, thereby ensuring that any safety risk or nuisance caused by customers, other users of the public highway or any adjacent land or premises, is minimised.
11. The operation of the area must not interfere with highway drainage arrangements.
12. All detritus (food and drink remnants, spillages, bottles, cans, wrappers etc) be regularly removed from the footway surface to reduce hazards to pedestrians. The licence holder must make arrangements to regularly check for and to remove litter and rubbish on pedestrian walkways, caused by persons using the licensed area, for a distance of up to 10 metres from the boundary of the licensed. The licence holder must ensure that any

tables are cleared in an efficient manner during the hours of operation. The licence holder must clean any spillages that may occur.

13. The licence holder is not permitted to make any fixtures, or excavations of any kind, to the surface of the highway without prior written approval. Any costs incurred as a result of damage to the highway, due to the positioning of tables and chairs etc, will be recovered in full from the licence holder by the London Borough of Hillingdon Council.
14. The Licensee of a premises not licensed under the Licensing Act 2003 or any modification or re-enactment thereof, must not allow the consumption of alcoholic liquor within the licensed area.
15. The Licensee of a premises licensed under the Licensing Act 2003 or any modification or re-enactment thereof, must not allow the consumption of alcoholic liquor within the licensed area outside the hours in force for the premises itself.
16. The licence must be displayed on the premises with a plan of the agreed layout of the pavement café.
17. The licensee is responsible for ensuring that the conditions of the licence and any other necessary permissions and regulations are adhered to. The Licence holder is to use the highway solely for the purpose of the licence in line with the provisions of this licence and for no other purpose whatsoever.
18. London Borough of Hillingdon Council reserves the right to revoke this licence at any time if any of the above conditions are not fulfilled and maintained.

Annex 3 - National Conditions

No Obstruction

19. Clear routes of access along the highway must be maintained, taking into account the needs of disabled people, and the recommended minimum footway widths and distances required for access by mobility impaired and visually impaired people as set out in Section 3.1 of [Inclusive Mobility](#).
20. Section 4.2 of [Inclusive Mobility](#) sets out that footways and footpaths should be as wide as practicable, but under normal circumstances a width of 2000mm is the minimum that should be provided. If this is not feasible due to physical constraints. A minimum width of 1500mm could be regarded as the minimum acceptable distance between two obstacles under most circumstances

Smoke-Free Seating

21. Clear 'smoking' and 'non-smoking' areas, with 'no smoking' signage displayed in designated 'smoke-free' zones in accordance with Smoke-free (signs) regulations 2012.

22. No ash trays or similar receptacles to be provided or permitted to be left on furniture where smoke-free seating is identified.
23. Licence holders should provide a minimum 2M distance between non-smoking and smoking areas, wherever possible.

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STRICTLY NOT FOR PUBLICATION

Exempt information by virtue of paragraph(s) 3 of Part 1 of Schedule 12A
of the Local Government Act 1972 (as amended).

Agenda Item 15

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