

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>
Putting our Residents First Delivering on the Council Strategy 2022-2026	<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)
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 \(www.gov.uk\)](#)