

Title of meeting: LICENSING COMMITTEE

Date of meeting: 08 July 2024

Subject: Pavement Licences - Business and Planning Act 2020 and Levelling-up and Regeneration Act 2023

Report by: LICENSING MANAGER

Wards affected: ALL

Key decision: No

Full Council decision: Yes

1. Purpose of report

The purpose of this report is threefold:

- To provide an update on the pavement licensing regime which was introduced on a temporary basis during the pandemic under the Business and Planning Act 2020 and has now been made permanent under the Levelling up and Regeneration Act 2023;
- To approve the relevant fees payable for new and renewal applications and to delegate decision making to the Head of Service; and
- To recommend to Council the delegation of this function to the Licensing Committee and the associated delegations as set out in the recommendations below.

2. Recommendations

(a) That the Licensing Committee note the changes to the pavement licensing regime as set out in the Levelling up and Regeneration Act 2023;

(b) That the Licensing Committee approve the relevant fees payable for new and renewal applications as follows:

New Applications: £500

Renewal Applications: £350

(c) That the Licensing Committee recommends to Council the delegation of this function to the Licensing Committee together with:

- **Delegation to the Head of Service to undertake the administration of all pavement licensing matters pursuant to the Business and**



Planning Act 2020 as amended by the Levelling up and Regeneration Act 2023. To include the power to grant, renew, refuse, or revoke pavement licences, including confiscation of unauthorised furniture on the highway, and subject to such standard and special conditions as considered appropriate;

- **Delegation to the Head of Service to recommend to the Licensing Committee, from time to time, such fees and/or other reasonable expenses/charges to recover the costs of administration and compliance with pavement licensing requirements. (Subject to the maximum cap applied by the Secretary of State for fees that may be charged);**
- **Delegation to the Head of Service to refund such fee(s) for unsuccessful applications as considered appropriate on individual merit;**
- **Delegation to the Head of Service to establish, amend, vary and/or substitute any necessary application forms, guidance notes, processes and other necessary documentation commensurate with these proposals.**

3. Background

- 3.1 A pavement licence is a licence granted by the local authority, or deemed to have been granted, which allows the licence-holder to place removable furniture over certain highways adjacent to the premises in relation to which the application was made, for certain purposes.
- 3.2 The Business and Planning Act process provides for a streamlined and cheaper route for businesses such as cafes, restaurants, and bars to secure a licence to place furniture on the highway.
- 3.3 The Levelling Up and Regeneration Act makes permanent the pavement licensing regime with a number of changes. The new legislation introduces a standard fee cap for both new and renewals of licences as well as increased consultation and determination periods, lengthens the maximum duration of licences (up to 2 years) and provides local authorities with new powers to remove unlicensed furniture.
- 3.4 Permission to place objects or structures on the highway are otherwise granted primarily under Part 7A of the Highways Act 1980 and this function is also delegated to the Licensing Committee. The fee for the Highways Act process varies between local authorities and there is a minimum 28 calendar day consultation period. The new pavement legislation has been introduced to provide a cheaper, easier and quicker way for businesses to obtain a licence.



- 3.5 The fee for applying for a licence under the Business and Planning Act process is capped at £500 for first time applications and £350 for renewals and the public consultation period is 14 days (excluding public holidays), starting the day after the application is sent electronically to the authority.

If the local authority does not determine the application before the end of the determination period (which is 14 days beginning with the first day after the end of the public consultation period, excluding public holidays), the licence is deemed to have been granted for two years and the business can place the proposed furniture such as tables and chairs within the area set out in the application for the purpose or purposes proposed.

- 3.6 Having regard to the short determination period set out in the legislation, it is recommended, in order to ensure an efficient licensing process, that delegation is given to authorised officers to determine applications including the refusal and/or revocation of licences.

- 3.7 The new licensing regime now provides additional powers to the local authority in respect of circumstances where furniture has been placed on a relevant highway without the required licence, local authorities can give notice requiring the business to remove the furniture before a date specified and to refrain from putting furniture on the highway unless they gain a licence.

If furniture continues to be placed on the highway, in violation 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 3 months of the notice, the costs are not paid, the authority can dispose of the furniture by sale or other means and retain the proceeds.

- 3.8 **Local Authorities (Functions and Responsibilities) (England) Regulations 2000**

Section 8 of the Business and Planning Act 2020 amends Schedule 1 to the Local Authorities (Functions and Responsibilities) (England) Regulations 2000. This amendment means that the pavement licence regime is not to be the responsibility of an authority's executive. Therefore, it is Council that may delegate decisions to a committee or officer of the authority.

Having regard to the above provisions, it is proposed that Council will receive a report from the Licensing Committee at its meeting on 16 July 2024 with recommendations from the Committee as regards the delegations for this now permanent licensing function as set out in the recommendations at section 2 of this report.



3.9 Fees and charges

The introduction of the pavement licence regime, where fees are currently capped at £100, has seen a deficit emerging within the licensing budget whereby the revenue from processing applications under the Highways Act 1980 has decreased due to applications being made under the pavement licensing regime.

Outturn for Year 23/24 showed a deficit of £3.5k against the budget estimate of £18,800 and this deficit will continue to increase exponentially year by year with the new legislative requirements for licences to be processed under the Business and Planning Act as opposed to the Highways Act 1980.

In order to ensure that the Licensing Authority can achieve cost recovery for undertaking its statutory function, the fees recommended to be charged are:

New applications: £500
Renewal applications: £350

It should be noted that these fees, and all other fees where the licensing authority has discretion to set fees, will be reviewed annually by the Licensing Committee and, if necessary can be reduced if income exceeds expenditure. The fees, however, cannot be increased as they are capped at the level recommended above.

Guidance

- 3.10 The government has produced guidance for licensing authorities undertaking this licensing function and this is attached as **Appendix A** to this report. The guidance attached also gives applicants further information as to how the PCC will process applications along with the standard conditions attached to licences.

4. Reasons for recommendations

- To inform the Licensing Committee of the permanent statutory arrangements for the pavement licensing regime;
- To ensure that appropriate delegations from Council to the Licensing Committee and Head of Service are in place in accordance with the Local Authorities (Functions and Responsibilities) (England) Regulations 2000;
- To ensure that the fees charged for processing and determining applications are implemented to achieve cost recovery for the delivery of the licensing function.



5. Integrated impact assessment

An Integrated Impact Assessment has been prepared and is attached as **Appendix B**

6. Legal implications

The legal implications are embodied within the report.

7. Director of Finance's comments

As outlined in this report the Licensing Authority needs to ensure they can achieve cost recovery for undertaking its statutory function. The fees and charges have been reviewed and set to address the year-end deficit in 23/24. The fees will be reviewed annually by the Licensing Committee and reduced if necessary if income exceeds expenditure.

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Signed by:

Appendices:

Background list of documents: Section 100D of the Local Government Act 1972

The following documents disclose facts or matters, which have been relied upon to a material extent by the author in preparing this report:

Title of document	Location
Business and Planning Act 2020	Business and Planning Act 2020 (legislation.gov.uk)
Levelling-up and Regeneration Act 2023	Levelling-up and Regeneration Act 2023 (legislation.gov.uk)
The Local Authorities (Functions and Responsibilities) (England) Regulations 2000	The Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (legislation.gov.uk)

The recommendation(s) set out above were approved/ approved as amended/ deferred/ rejected by on

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Signed by: