

WELWYN HATFIELD BOROUGH COUNCIL
LICENSING COMMITTEE – 22 AUGUST 2024
REPORT OF THE EXECUTIVE DIRECTOR (RESIDENT SERVICES AND CLIMATE
CHANGE)

PAVEMENT LICENCES POLICY AND FEE APPROVAL

1 Executive Summary

- 1.1 This report is to clarify the changes to the temporary pavement licensing regime under the Business and Planning Act 2020 (which were implemented as a temporary measure during the Covid pandemic) and the impact of the changes to this regime made by the Levelling Up and Regeneration Act 2023.
- 1.2 The Levelling up and Regeneration Act 2023 became law last year, but the provisions to make the temporary pavement licence scheme permanent were not immediately commenced but has come into force on 31st March 2024. The provisions have introduced changes including a new capped level fee structure for new and renewal applications.
- 1.3 This report asks members to approve the attached pavement licence policy which has been prepared for this new regime.
- 1.4 This report asks members to approve the pavement licence maximum fees for this new regime.

2 Recommendation(s)

- 2.1 That the Licensing Committee agrees to recommend to Full Council, for approval, the new maxima fees of £500 for a new two-year pavement licence and £350 for a renewal pavement licence.
- 2.2 That the licensing committee approve the new policy for pavement licensing.

3 Explanation

- 3.1 Temporary Pavement Licences were introduced by the Business & Planning Act 2020 (BPA 2020) in 2020 to streamline the process of obtaining a pavement licence and help businesses during the Covid pandemic. Section 229 and schedule 22 of the Levelling Up & Regeneration Act 2023 (LU&RA 2023) amends the Business & Planning Act 2020 to make the provision of temporary pavement licencing regime permanent. The commencement date for this amendment was 31 March 2024.
- 3.2 From 31 March 2024 the process for issuing temporary pavement licences under the BPA 2020 became permanent under the LU&RA 2023. A letter and guidance from the Department for Levelling Up, Housing & Communities was

issued to all Local Authorities in England on 2 April 2024. A copy of the letter can be found at Appendix A and the Government Guidance is attached as a link to this report.

- 3.3 The main changes to temporary pavement licensing as a result to the amendment to the BPA 2020 are as follows:
 - 3.3.1 The introduction of maximum standard capped fees for new and renewal applications. The fee levels are capped at a maximum amount of £500 for new applications and £350 for renewal applications. The fee applicable for a temporary pavement licence was previously £100.
 - 3.3.2 The duration of the consultation and determination periods have increased from 7 days to 14 days.
 - 3.3.3 The maximum term for which a licence can be granted has increased to 2 years (from one-year previously).
 - 3.3.4 Provides that pavement licences can also be amended by the local authority with the consent of the licence holder in certain, specified, circumstances.
 - 3.3.5 Inserts a new enforcement schedule providing powers to the local authority to remove furniture if a premises is not abiding by its pavement licence conditions and hours.
 - 3.3.6 Pavement licences will be issued with national and local conditions. The national conditions and local conditions can be found at Appendix B1 and B2.
 - 3.3.7 The 2020 Act sets out two conditions which apply to pavement licences which are granted or deemed to be granted; these are: a no-obstruction condition and a smoke-free seating condition. These apply only to licences granted under the Business and Planning Act 2020, not existing licences permitted under Part 7A of the Highways Act 1980, or other relevant legislation.
 - 3.3.8 One of the benefits of the pavement licence procedure is that once a pavement licence is granted by the local authority, the premises will benefit from deemed planning permission for the furniture for the duration of the pavement licence. This will not change.
- 3.4 Any licence applications for activities licensable under pavement licensing legislation must be granted under the BPA2020. They should not be granted under the Highways Act 1980. However non removeable furniture or furniture other than tables, chairs or stools will still require a licence under the Highways Act 1980. HCC previously issued pavement licences under the Highways Act
- 3.5 The licensing team currently manage a total of four pavement licences, all of which were issued before 31 March 2024 and therefore were licensed under the BPA 2020 before the changes introduced by the Levelling-up and Regeneration Act 2023. These licences will expire on 30 September 2024 in line with the guidance issued from the Department of Levelling Up, Housing and Communities. These licences should be treated as a renewal application if it is made by the licence-holder in respect of the same premises and it is on the same terms as the expired licence.

- 3.6 As the pavement licensing regime has now become permanent, a policy has been prepared for the licensing committee to approve and this is attached at Appendix C.
- 3.7 Hertfordshire County Council have previously issued permanent street café licences issued under the Highways Act 1980.
- 3.8 Officers have already started work to contact the businesses holding pavement licences to inform them of the amendments to the BPA 2020.
- 3.9 Work has commenced in updating our information to the public and to update our application process.

Implications

4 Legal Implication(s)

- 4.1 The Business and Planning Act 2020, as amended by the Levelling-up and Regeneration Act 2023, provides that a person whose use or proposed use of any premises in England is or includes [a] relevant use may apply to the council (the 'Licensing Authority') for a [pavement] licence in respect of those premises.
- 4.2 On receipt of an application the council has a duty to publish the application and to publicise the fact that representations relating to the application may be made to the authority during the 14-day public consultation period.
- 4.3 Within 14 days of the end of the public consultation period the council must determine the application. Before doing so the council must: (a) take account of any representations received during the consultation period; (b) consult the highway authority for the relevant highway to which the application relates; and (c) consult such other persons as the council considers appropriate.
- 4.4 The council may grant a pavement licence only if it considers that, taking into account any conditions subject to which it proposes to grant the licence, nothing done by the licence-holder pursuant to the licence would have any of the effects specified within the Act; e.g. preventing traffic (other than vehicular traffic), particular types of vehicles and statutory undertakers from using the highway.
- 4.5 Pavement licences may be amended by the council, with the consent of the licence-holder where:
 - (a) the licence-holder did not comply with the duty to fix a notice of their application to the premises so that the notice is readily visible to, and can be read easily by, members of the public who are not on the premises, and to secure that the notice remains in place until the end of the public consultation period;
 - (b) some or all of the part of the relevant highway to which the licence relates has become unsuitable for any purpose in relation to which the licence was granted/deemed to be granted;
 - (c) as a result of the licence:
 - (i) there is a risk to public health or safety;
 - (ii) anti-social behaviour or public nuisance is being caused or risks being caused; or

(iii) the highway is being obstructed (other than by anything done by the licence-holder pursuant to the licence;

(d) anything material stated by the licence-holder in their application was false or misleading,

or

(e) a no-obstruction condition of the licence is not being complied with.

5 Financial Implication(s)

The issue of pavement licences, and administration of the Licensing functions, are met from within the existing budget and staff resources in the Licensing Team. The purpose of the licensing fees charged for applications under the Act are to cover the costs of the Licensing functions.

6 Risk Management Implications

6.1 Any charges which the applicants may incur from their application shall be reasonable and proportionate to the cost of the authorisation procedures in question and shall not exceed the cost of the procedures. Fees have been calculated on officer time and hourly rates including on costs and meet the statutory maxima.

7 Security & Terrorism Implication(s)

7.1 The Council has an overarching duty to have due regard to the need to prevent people being drawn into terrorism and to consider security and measures to counteract terrorism in public places.

7.2 For security advice regarding the protection of persons using pavement licences local authorities should consult Police Licensing Teams, Designing Out Crime Officers or Counter Terrorism Security Advisors. The authority must also consult such other persons as the local authority considers appropriate.

8 Procurement Implication(s)

8.1 None arising directly from this report.

9 Climate Change Implication(s)

9.1 The proposal appears to result in no increase in the use of water or other materials. All documentation and agreements other than the licence are sent electronically unless specifically requested.

10 Link to Corporate Priorities

10.1 The subject of this report is linked to the Council's Corporate Priority *"enable an economy that delivers for everyone"* as it supports trade through the issuing of licenses. It is also linked to the Council's Corporate Priority *'Together, create opportunities for our communities' - to help us feel safer where we live.*

11 **Equality and Diversity**

11.1 An Equality Impact Assessment (EqIA) has been completed and no negative impact was identified on any of the protected groups under Equalities legislation, and the regime is likely to have a positive impact on some characteristics.

Name of author	Kate Payne 01707 357206
Title	Licensing Team Leader
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Background papers to be listed

Guidance – [pavement licences: guidance - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/pavement-licences)

Appendices

Appendix A - Letter

Appendix B1 an B2 – National and Local License conditions

Appendix C – WHBC Pavement Licence Policy

Appendix D - EqIA