

LICENSING COMMITTEE

Pavement Licence Policy

27 June 2024

Report of Licensing Manager

PURPOSE OF REPORT

The Levelling Up and Regeneration Act 2023 made the provisions of the Business and Planning Act 2020 permanent with effect from 31 March 2024. This includes pavement licensing, as such there is a need for Licensing Committee to update the current pavement licence policy and set fees for new and renewal applications.

This report is public.

RECOMMENDATIONS

- (1) That members approve the updated pavement licence policy and,
- (2) Set a fee for new and renewal applications, allowing for full cost recovery.

1.0 Introduction

- 1.1 The Business and Planning Act 2020 introduced provisions designed to make it easier for premises serving food and drink such as bars, restaurants and pubs to seat and serve customers outdoors, maximising their ability to trade, assisting them to operate safely and promoting economic recovery in response to the impact of the global COVID-19 pandemic.
- 1.2 The act created a regime for processing applications for 'pavement licences' to authorise businesses such as cafes, restaurants and bars to place furniture on the highway. This was a fast-track procedure to get the same permissions a business would previously have had from a Part 7A Highways Act permit, street trading consent and planning permission (change of use).
- 1.3 The Levelling Up and Regeneration Act 2023 made the provisions of the Business and Planning Act 2020 permanent with effect from 31 March 2024.
- 1.4 The provisions of the Business and Planning Act 2020 allow Licensing Authorities greater local control over the pavement licensing regime, including local application standards, locally set fees and specific enforcement powers, which were not available as a compliance tool with the temporary provisions.
- 1.5 The guidance issued can be viewed at **Appendix 1**.
- 1.6 The Councils Pavement Licence Policy has been updated to reflect the permanent

provisions, attached at **Appendix 2** for members attention.

2.0 Transitional Details

- 2.1 Existing pavement licences granted under the Business and Planning Act 2020, prior to the commencement date of the permanent regime, will remain valid until the expiration date on the licence, given to them by the licensing authority. Once this has expired, businesses will need to apply for a new licence. Licensing authorities should treat this as a renewal application if it is made by the licence-holder, it is in respect of the same premises and it is on the same terms as the expired licence.
- 2.2 Licences determined before the 31 March 2024 will be subject to the enforcement powers set out in the permanent regime. Any pavement licence that was granted under the Business and Planning Act 2020 before the commencement date with no limit on its duration, or that was deemed to be granted will expire 2 years from the commencement date.
- 2.3 Any permission that was granted by a council under the Highways Act 1980 before the commencement date will continue under that legislation. Applications made (and submitted to the local authority) on or before 30 March 2024 but determined on or after 31 March 2024 will be subject to a 7-day consultation, 7-day determination period. The maximum fee that can be charged for applications during this timeframe is £100. However, these licences can be granted for up to 2 years.
- 2.4 From the commencement date, a council may not grant an applicant permission to do anything which is capable of being authorised by a pavement licence under the Business and Planning Act 2020. Lancaster City Council are no longer issuing permissions under the Highways Act 1980 referred as a Street Café Licence, instead assisting applicants to complete a permanent pavement licence application.
- 2.5 Since the introduction of the permanent regime, Licensing have received a handful of new pavement licence applications, these have been administered in line with the above arrangements. The majority of current pavement licences expire on 30 September 2024; so there is a need to approve the updated policy and fee structure to allow for a swift renewal.

3.0 Fee Setting – New/Renewal

- 3.1 The legislation allows fees to be set locally, and it is for the Licensing Authority to determine the appropriate charge. Fees are capped at a maximum of £500 for first time applications and £350 for renewals.
- 3.2 The temporary arrangement pavement licence fee was capped at £100.00, which did not cover the true cost of administering and processing the application then monitoring compliance. The application process is considerable with significant important matters to consider, including scrutiny of plans/equipment and spacing requirements. There are issues in the town centres of Morecambe and Lancaster regarding street furniture from time to time with Officers requiring to visit the areas to speak with licence holders and reaffirm conditions of licence. The enforcement powers now available to authorised Officers will assist with managing non-compliance.
- 3.3 A cost-setting exercise has been undertaken for new and renewal pavement licence applications for 2024/25, with a recommended fee that should work to achieve full cost recovery (based on previous knowledge of Officer activity)

The recommended fees are £500 (2-year new application) and £350 (2-year renewal application), the difference is attributed to a streamlined renewal process so documents submitted (checked previously) can be utilised for the renewal application process.

4.0 Options available for members

Options available for members

- a) Approve the updated pavement licence policy with or without modification, and
- b) Set a fee for new and renewal applications with a view to achieving full cost recovery.

5.0 Conclusion

5.1 The Business and Planning Act 2020 was passed to promote economic recovery and growth in response to the economic impacts of the global Covid-19 pandemic. The Act included urgent provisions designed to make it easier for premises in England serving food and drink such as bars, restaurants and pubs to seat and serve customers outdoors through temporary changes to planning procedures and alcohol licensing.

5.2 The process introduced a streamlined and cheaper route for businesses such as cafes, restaurants and bars to secure a licence to place furniture on the highway. The aim of the legislation was to support businesses to operate safely while social distancing measures remained in place and to provide much needed income over the summer months and protect as many hospitality jobs as possible.

The Levelling Up and Regeneration Act 2023 now makes permanent the provisions set out in the Business and Planning Act and all applications received after 31 March 2024 will be administered under the new regime.

5.3 The legislation allows Local Licensing Authorities to set fees locally, and wherever possible, to achieve full cost recovery, which until now has not been possible via the temporary arrangements.

5.4 The existing Pavement Licence Policy has been updated to reflect changes to the previous temporary provisions. The Licensing Manager has undertaken a cost setting exercise to set new and renewal fees, using previous service knowledge and experience in delivering the administration and monitoring of pavement licensing to Lancaster City Council.

5.5 Members are reminded to make full and detailed reasons for their decision(s)

<p>CONCLUSION OF IMPACT ASSESSMENT (including Health & Safety, Equality & Diversity, Human Rights, Community Safety, Sustainability and Rural Proofing):</p>
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<p>Each pavement licence application is determined on its own merits and subject to a public consultation, by way of public notice affixed to the premises. Additionally, Lancashire</p>
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Highways Authority, Lancashire Police or Environmental Protection may object to the grant of a licence.

LEGAL IMPLICATIONS

If the site is deemed unsuitable for a Pavement Licence, or if relevant representations are made which cannot be mitigated by conditions, then the application may be refused.

There is no statutory appeal process against a decision to refuse an application.

A business may apply again after refusal but will have to make a new application and address the concerns raised in the original application

FINANCIAL IMPLICATIONS

As far as reasonably practicable, Licensing fees should be set with the aim to achieve full cost recovery, including the administration and monitoring of that licence throughout its duration.

It is important to note that one area of Licensing should not subsidise another, nor should Licensing Authorities seek to recover surplus/deficits from previous years.

OTHER RESOURCE IMPLICATIONS, such as Human Resources, Information Services, Property, Open Spaces

None identified.

SECTION 151 OFFICER'S COMMENTS

None.

MONITORING OFFICER'S COMMENTS

None.

BACKGROUND PAPERS

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