

Pavement Licensing Procedure



Report to: Licensing Committee

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Executive Summary

A The licensing provisions of the Levelling-up and Regeneration Act 2023 (LURA2023) came into force on 31 March 2024 and amended the pavement licensing provisions contained within the Business and Planning Act 2020 (BPA2020). The council is required to update the licensing regime and set new fees.

Recommended that:

- A** Subject to any amendments required by the Committee, members approve the new pavement procedure in Appendix A for recommendation to Full Council, for adoption on 20 September 2024.
- B** The relevant fees be agreed and recommended to Full Council, for adoption on 20 September 2024, in accordance with the maximum cap of £500.00 for new applications and £350.00 for renewal applications, and to extend the issue of a pavement licence to 2-years, unless specified for a shorter duration.
- C** Delegation of the relevant responsibilities under the Act be approved as set out in the Pavement Procedure and Appendix B to the report.
- D** Where an application is refused, that there be an internal option to appeal that decision to the Regulatory Sub-Committee as set out in the Pavement Procedure.

Reason for decision

- A** To enable the Council to continue to administer the pavement licensing functions following legislative changes introduced by the LURA2023, which supports local businesses to be able to apply for a pavement licence for the provision of street furniture.

Other Options

- A** There are no alternative options. If the Council does not set licence fees and its Pavement Procedure, applicants are unable to apply for a pavement licence and the Council cannot meet its statutory obligations.

Background

1. The Government introduced the Business and Planning Act 2020 (the BPA2020) with the purpose of assisting the recovery of the economy in relation to the effects of the pandemic. One purpose of the BPA2020 was to provide for the temporary grant of pavement licences for those businesses supplying food and drink. Pavement licences assumed a new importance due to their outdoor setting and lower risk of transmitting Coronavirus.
2. The BPA2020 enabled the granting of permission to place objects on the highway, delegated to local authorities. In the context of the legislation, 'highways' include pavements – without this authorisation, such placement would constitute an offence of wilful obstruction.
3. Furniture which may be placed on the pavement includes:
 - counters or stalls for selling or serving food or drink;
 - tables, counters or shelves on which food or drink can be placed;
 - chairs, benches or other forms of seating; and
 - umbrellas, barriers, heaters and other articles used in connection with the outdoor consumption of food or drink.
4. Furniture is required to be removable and related to the serving, sale and consumption of food and drink. Local authorities should be pragmatic when determining what is 'removable' but in principle this means it is not a permanent fixed structure, and is able to be removed easily, and stored away at night.
5. There are two specific national conditions as set out in the BPA2020 which apply to pavement licences; being a no-obstruction condition and a smoke-free seating condition.
6. The Appendices to the Pavement Procedure lists a proposed range of standard conditions to attach to pavement licences.

7. Any licence applications for activities in England, licensable under pavement licensing legislation in the Business and Planning Act 2020 must be granted under the Business and Planning Act 2020 (as amended by section 229 of and schedule 22 to the Levelling Up and Regeneration Act). They should not be granted under the Highways Act 1980.
8. 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.
9. Any permission that was granted by a council under the Highways Act 1980 before the commencement date will continue under that legislation.
10. Applicants will still need to apply for permission to carry out activities not licensable under the Pavement Licensing regime, under the Highways Act 1980. Example of such activities include the placement of furniture that is not removeable, such as bolted to the ground or cannot be reasonably removed, or placement of furniture other than tables, chairs or stools on the highway.
11. The Business and Planning Act 2020 (Pavement Licence) (Coronavirus) (Amendment) Regulations 2023 (BPA2023 Regs) were enacted to extend the duration of the temporary pavement licence provisions until 30 September 2024. The new Pavement Procedure and fees in the report will allow businesses to renew permissions for street furniture or to apply for a new pavement licence where applicable.
12. There are currently 2 pavement licences in the district of Harlow under the BPA2020. There are also 3 tables and chairs Highways Act licences that will be considered for transition to pavement licences on renewal. One premises holds both licence types and shall be able to merge into one renewal application.

Issues/Proposals

13. The updated Procedure sets out the framework for the management of pavement licences in the district of Harlow, as set out in Appendix A to the report.
14. Pavement licences make a valuable contribution to the local culture and economy of an area. The Procedure intends to promote a flexible approach, within the legal framework, in relation to applicants seeking to operate a pavement licence whilst ensuring that the activities do not cause nuisance or annoyance to other users of the highway.
15. The Levelling-Up and Regeneration Act 2023 makes several amendments to the original provisions and the Council's Procedure has been reviewed to reflect the relevant changes, these include:
 - a) Extending the public consultation period from 7 days to 14 days.

- b) Extending the determination period from 7 days to 14 days.
 - c) Extending the maximum duration of pavement licences from 1 to 2 years. However, the length of the licence remains the discretion of the Council.
 - d) The Provision that pavement licences can 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 prohibition from granting a tables and chairs licence under the Highways Act, where a pavement licence can be issued.
 - f) The insertion of 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 and enables the recovery of costs for doing so where appropriate.
 - g) Amending the maximum fees a Council can charge applicants, from the previous temporary fee of £100. Up to £500 for a new licence, and where a premises already hold a pavement licence, £350 for a renewal.
16. The Council is entitled to recover the 'reasonable and proportionate' costs associated with the grant or renewal of a licence.
17. The fees for a new licence and a renewal of an existing licence are set by the Act to a maximum of £500 for a new application and £350 for a renewal of a licence respectively. The council has discretion on what to charge, up to the maximum set. It is recommended that the fee should be set to the maximum allowance for a two-year licence (or for a shorter period where necessary) for the following reasons:
- a) Prior to the BPA2020, Harlow Council issued a licence for the placement of furniture on the highway under the HA1980. From the period of 01/04/2023-31/03/2024, there were 3 applications, of which 3 were granted, which generated an income of £3,673. If all current HA1980 licences are to apply for a new pavement licence, at the maximum fee setting, this will generate an income of £1,500.
 - b) In the same time period, there were 3 BPA2020 Pavement licence applications, of which 3 were granted, which generated an income of £300. One of which has not renewed.
 - c) Total income for licensed areas in 2023-2024 was £3,973, or £7,946 for the last 2-year period. Projected income over the next 2-year period from current pavement licenced areas is £1,850 (3 new, 1 renewal), a reduction of £6,096 over the next 2 years (£3,048 per year).
 - d) Costs to the authority include updating the Pavement Procedure with the new requirements under the LURA2023 and its authorisation under Licensing Committee/Full Council, the training of staff, processing, inspecting, monitoring and enforcing pavement licences.
 - e) Processing a licence application includes validating the application and its supporting documents and that the correct fee has been paid. Time is spent undertaking the consultation process which includes responding to any enquiries from Statutory Consultees, any refusal notices or granting of the licence.
 - f) A new application or an application where there is significant change from previous year would require time to look at the suitability of the proposed location, the number

of tables and chairs, and the merits of the application, such as whether any additional measures have been proposed by the applicant.

- g) The overall fees for the scheme must cover the cost of any regulatory sub-committee internal appeal process.
 - h) In balance, to reduce the cost and administration of a licence application, it is proposed that licences are issued for the maximum of two years, whereas the temporary scheme was for one year only. During a two-year licence period, there will be a need for continuation of inspection, monitoring and enforcing the regime. With the updated enforcement powers, it is anticipated that there will be additional time required by Officers.
18. These fees will be kept under review while the regime is implemented to ensure appropriate cost recovery is being maintained.
 19. It is proposed that the licence duration be set at a maximum of 2 years. However, should there be legitimate reasons for offering a licence of shorter duration, it is proposed that the fee remains the same due to the same consultation and application processes, monitoring and enforcement.
 20. On the assumption of maximum set fees, the current demand for a licence for tables and chairs projects an income of £1,850 (or £925 per year). Subsequent income of 4 Pavement Licence renewals would generate £1,400, (or £700 per year). The activity will create additional burden on staff time and at this point is unlikely to achieve full cost recovery. However, further applications may be received from new and existing businesses but is an unknown quantity at this moment in time. The matter shall be kept under review, particularly in relation to other elements of enforcement across the team and assessed at next years' budget setting.
 21. The pavement procedure sets out the proposed delegations for decision making and enforcement based on the new amendments in legislation. In accordance with the Council's Constitution, where a function is delegated to the Director and Assistant Director, arrangements may be made to further delegate functions, which reflect the specific competencies and legal requirements of that activity. This can be viewed in Appendix B to the report.
 22. As under the temporary provisions of the past few years, it remains that once a licence is granted, or deemed to be granted, the applicant will also benefit from deemed planning permission to use the land for anything done pursuant to the licence while the licence is valid.
 23. Whilst there is no statutory obligation on the Council to have a pavement procedure, it is good practice to do so and provides the authority with a framework within which to work. In addition, it assists with consistent and transparent decision making.
 24. There is no statutory right of appeal in relation to the Council's decision to a pavement licence application. However, the Guidance states that Council's may wish to consider

the scope for an internal review process, for example permitting appeals to their Licensing Committee. It is proposed the option for an internal appeal, where the Council's decision is to refuse a licence application may be taken before a Regulatory Sub-Committee hearing.

25. Each case will be determined on its own merits, "the fuller and clearer the reasons, the more force they are likely to carry," and a matter of judgement rather than that of pure fact, any conditions attached to a licence shall be necessary and proportionate to the promotion of the legislation's objectives (as defined in R (Hope and Glory Public House Ltd) v City of Westminster Magistrates' Court [2011] EWCA Civ 31.

Implications

Equalities and Diversity

An Equality Impact Decision Tree has been completed and required an Equality Impact Assessment, which can be viewed at Appendix C.

Climate Change

None Specific.

Finance

Financial implications and reasons for increasing the licence fees are set out in paragraph 17 of the report.

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Governance

The changes reflect amendments contained in the Levelling Up and Regeneration Act 2023 and supersedes the temporary pavement licensing procedures approved by Full Council in September 2022.

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Appendices

Appendix A - Pavement Licensing Procedure

Appendix B - Delegation of Functions

Appendix C - Equality Impact Assessment

Background Papers

Business and Planning Act 2020 (legislation.gov.uk) -

<https://www.legislation.gov.uk/ukpga/2020/16/contents/enacted>

Levelling-up and Regeneration Act 2023 (legislation.gov.uk) -

<https://www.legislation.gov.uk/ukpga/2023/55/enacted>

Pavement Licences: Guidance (GOV.UK) -

<https://www.gov.uk/government/publications/pavement-licences-guidance/pavement-licences-guidance>

Glossary of terms/abbreviations used

BPA2020 – Business and Planning Act 2020

BPA2023 Regs – Business and Planning Act 2020 (Pavement Licence) (Coronavirus)
(Amendment) Regulations 2023

LURA2023 – Levelling-up and Regeneration Act 2023