

# Licensing (Urgency) Committee Report



City of Westminster

## Licensing (Urgency) Committee Report

<b>Decision Maker:</b>	Licensing (Urgency) Committee
<b>Date:</b>	25 April 2024
<b>Title:</b>	Pavement Licences
<b>Wards Affected:</b>	All
<b>Report of:</b>	Mark Wiltshire - Director of Public Protection & Licensing

### 1. Executive Summary

- 1.1 This has become an urgent decision because the legislation, unexpectedly commenced on 31 March and the Licensing Service is receiving applications and therefore a decision is required urgently as applications must be determined within 28 days or they are automatically granted for 2 years.
- 1.2 The Levelling Up & Regeneration Act 2023 became law last year, the provisions to make the pavement licence scheme permanent were not immediately commenced. It was anticipated that it would happen later in this year.
- 1.3 The council has historically issued Tables & Chairs licences under the City of Westminster Act, typically there was approximately 900 licences.
- 1.4: In response to Covid, temporary legislation was introduced as part of a package of economic driven reforms. The Business and Planning Act 2020 created the pavement licensing regime, along with other legislative measures. The City of Westminster Act ran in parallel with the pavement licensing process, and the City Council has been issuing pavement licences to businesses to facilitate outdoor dining under these powers.
- 1.5: The temporary legislation and was due to expire at the end of September 2024, however, the government has made the scheme permanent, with some amendments, through the Levelling Up & Regeneration Act which received royal assent last year and came into force on Sunday 31 March 2024. This means applicants who are seeking permission for tables and chairs (and other furniture) in connection with the consumption of food and drink, are required to apply under

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the Business and Planning Act 2020 for a pavement licence rather than applying under the City of Westminster Act.

## 2. Recommendations

2.1 A decision is required on what fee should be set.

At present, the fee is based on the maximum permitted fee setting allowed.

2.2 **Recommendation:** To set the fee at the statutory maximum, that is £500 for new applications and £350 for renewal applications.

2.3: Its further recommended that as licences granted under the City of Westminster Act will automatically lapse and not be renewable at their expiration, any premises holding such a licence shall be treated as a renewal under the new regime (as long as such an application is made before the expiration of the existing licence) and the scope of the application is exactly the same as the application under the granted licence.

## 3. Reasons for Decision

3.1 The Levelling Up & Regeneration Act became law last year, the provisions to make the pavement licence scheme permanent were not immediately commenced. It was anticipated that it would happen later in the year but it unexpectedly commenced on 31 March and the Licensing Service is already receiving applications and therefore a decision is required urgently as applications must be determined within the 28 days or they are automatically granted for 2 years.

3.2 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 does have discretion on what to charge, up to the maximum, but it is a recommendation that the fee should be set to the maximum for the reasons specified below.

3.3 The Business and Planning Act 2020 initially set the fee up to a maximum of £100. This was a significant reduction from the fees for tables & chairs licence under the City of Westminster Act and did not cover the Council's costs of processing, inspecting, monitoring and enforcing the pavement licensing regime.

3.4 Processing a pavement licence application takes on average 3 to 4 hours for a renewal application and 5 to 6 hours for a new application. For renewal applications, this time includes the time to validate the application, ensuring that all the relevant paperwork has been provided with the application and the correct fee has been paid. Time is also spent undertaking the consultation process and once the consultation period has ended, assessing any comments and/or

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objections made by Environmental Health, Highways Planning and local residents and other persons who have made any representations, determining the application and granting or refusing the application.

- 3.5 For new applications, or where there is a significant change from a previous licence, this will be similar to the above but will also include additional time to ensure the suitability of the proposed location, the number of tables and chairs proposed etc, and assessing the merits of the application.
- 3.6 The fully on costed, hourly rate of a licensing Officer is approx. £100, therefore setting the Renewal fee at £350 and the fee for new grants at £500 would allow the council to recover the cost for processing these applications however, it will still not allow the recovery of the cost of inspecting, monitoring and enforcing the pavement licensing regime.

## 4. Background, including Policy Context

- 4.1 The council has historically issued Tables & Chairs licences under the City of Westminster Act, typically there was approximately 900 licences.
- 4.2: In response to Covid, temporary legislation was introduced as part of a package of economic driven reforms. The Business and Planning Act 2020 included provision for pavement licences. The City of Westminster Act ran in parallel for existing pavement licences, and the City Council has been issuing pavement licences to businesses to facilitate outdoor dining under these powers.
- 4.3: The temporary legislation was due to expire at the end of September 2024, however, the government has made the scheme permanent, with some amendments, through the Levelling Up & Regeneration Act which received royal assent last year and came into force on Sunday 31 March 2024.
- 4.4: The original legislation required applications to be determined within a 14-day window from receipt of the valid application and the licence must be issued for a minimum of 3 months from the start date. The application cost was set at the maximum of £100. This was a significant reduction from the fees for tables & chairs licence under the City of Westminster Act and did not cover the Council's costs of processing, inspecting, monitoring and enforcing the pavement licensing regime.
- 4.5: If a licence is not determined within the given timescales the licence was deemed granted. In the original legislation this time frame was 14 days. Under the permanent legislation this has been extended to 28 days.
- 4.6: Since the introduction of the pavement licence scheme in 2020, these licences have only been issued for a 6-month period.

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## 5. Impact of the Levelling Up and Regeneration Act on the Business and Planning Act

5.1 The Levelling Up & Regeneration Act makes the provisions for pavement licensing regime permanent.

5.2 The Act also makes several amendments to the original scheme including:

- Amending the fees councils can charge applicants, increasing it from £100 up to £350 for premises which already hold a pavement licence, and up to £500 for new applicants.
- Extends the public consultation period and council determination period from 7 days to 14 days.
- Extends the maximum duration of pavement licences from 1 year to 2 years. The length of a licence is still at the discretion of the local authority.
- Provides 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.
- Prohibits a local authority from granting a tables and chairs licence under the old regimes, if a pavement licence is capable of being granted under the Act.
- 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.

5.2 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.

## 6 Financial Implications

6.1 In 2023/24 the Council determined 1705 pavement licence applications. In addition to that the team processed 352 tables and chairs licences under the City of Westminster Act and recovered £1,096,025 in revenue income from these processes. It is important to recognise that this is not profit, as this income is used to provide both the administrative process.

6.2 Now that the provisions of the Levelling Up and Regeneration Act make the pavement licence scheme permanent it also has the effect of prohibiting the

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council from issuing tables and chairs under any other legislation. Therefore, it is no longer possible to issue licences under the City of Westminster Act.

- 6.3 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 does have discretion on what to charge, up to the maximum, but it is a recommendation that the fee should be set to the maximum.
- 6.4 Assuming the number of pavement licences remain consistent, and the licence fee is set at the maximum, the future income forecast for the next financial year would be £770,00 for renewals plus however many new applications are received. In addition to that, there are currently over 200 old tables and chairs licences under the City of Westminster Act. If they wish to renew, they will be required to apply for a pavement licence. This could be a further £140,000 annually.
- 6.5 With both fees set at the maximum level and renewals continuing to be required every 6 months, this will be within the current budgeted income target along with offsetting the costs of the administrative process, inspection and enforcement.

## 7. Legal Implications

- 7.1 In addition to the legal implications are contained within the body of this report.
- 7.2 When determining pavement licence applications, the Council must have regard to the Guidance issued by the Secretary of State.
- 7.3 Paragraph 2.1 of the Guidance states that to help support local businesses and give them more certainty, the expectation is that local authorities are pragmatic and will grant licences for the maximum period of 2 years, unless there are good reasons for granting a licence for a shorter period such as plans for future changes in use of road space.
- 7.4 The Council will need to consider a number of factors, when determining whether to approve a pavement application. These include whether local conditions might be needed to make it possible to approve an application which would otherwise be unacceptable.
- 7.5. When setting local conditions and determining applications, the Council will also want to consider the following factors:
  - public health and safety including security – for example, any reasonable crowd management measures needed as a result of a licence being granted;

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- public amenity – will the proposed use create nuisance to neighbouring occupiers by generating anti-social behaviour, and litter;
- accessibility – taking a proportionate approach to considering the nature of the site in relation to which the application for a licence is made, its surroundings, and its users, taking account of:
- considerations under the no-obstruction condition including the cumulative impact of multiple pavement licences in close proximity, in particular considering the needs of disabled people and any other temporary measures in place that may be relevant to the proposal, for example, the reallocation of road space. This could include pedestrianised streets and any subsequent reallocation of this space to vehicles;
- whether there are other permanent street furniture or fixed structures in place on the footway that already reduce access; and
- other users of the space, for example if there are high levels of pedestrian or cycle movements.

7.6 There is no statutory right of appeal in relation to the Council's decision in relation to a pavement licence application.

### 8. Equality Implications

8.1 S.149 of the Equality Act 2010 places a duty on local authorities to have due regard to the need to eliminate unlawful discrimination, to advance equality of opportunity between people who share a protected characteristic and to encourage good relations between those who share a protected characteristic and those who do not. The Council has had due regard to this duty when setting the fees and specifying the conditions which should be attached to the pavement licence.

8.2 When determining applications, the licensing authority will give due regard to the public and highway safety of other highway users in line with all the criteria it will take into account in determining whether or not an application should or should not be granted. The statutory conditions also take account of the needs of persons with mobility and visual impairments.