

Licensing Committee Report



City of Westminster Licensing Committee Report

Decision Maker:	Licensing Committee
Date:	25 September 2024
Title:	Pavement Licences
Wards Affected:	All
Report of:	Mark Wiltshire - Director of Public Protection & Licensing

1. Executive Summary

- 1.1 In response to Covid, the Business and Planning Act 2020 was introduced as part of a package of economic driven reforms. The act created the pavement licensing regime, along with other legislative measures, on a temporary basis.
- 1.2 The council historically issued Tables & Chairs licences under the City of Westminster Act, typically there were approximately 900 licences.
- 1.3 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.
- 1.4: 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. 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 the Business and Planning Act 2020 for a pavement licence rather than applying under the City of Westminster Act.
- 1.5 In April, the Licensing (Urgency) Committee set the fees for Pavement Licences at the statutory maximum, that is £500 for new applications and £350 for renewal applications. An urgent decision was needed at the time, to allow the Licensing Service to process these applications and this decision needs to be ratified by the Licensing Committee.

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- 1.6 The Levelling Up & Regeneration Act 2023 also 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, and since the introduction of the B&PA they have been issued for 6 months at a time. A decision is required to determine if Pavement Licences should continue to be issued as a benchmark for 6 months. If applicants apply for long durations these will be determined on their own merits.

2. Recommendations

- 2.1 **Recommendation 1:** That the Licensing Committee ratifies the decision of the Licensing (Urgency) Committee to set fees for Pavement Licences at the statutory maximum, that is £500 for new applications and £350 for renewal applications.

Recommendation 2: Continue to grant pavement licences for a period of 6 months as a benchmark but acknowledging that the applicant can apply for a longer period which will be determined on its own merits.

3. Reasons for Decision

Reason for Decision 1

- 3.1 A further decision is required to determine how long pavement licences should generally be issued for. The Act allows up to two years but since 2020 the Licensing Service has been issuing pavement licences for six months and this is in keeping with the previous scheme under the City of Westminster Act which was also for a period of six months.
- 3.2 The fees for a new licence and a renewal of an existing licence are set by the Business and Planning Act 2020 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, the Licensing Urgency Committee set the fee 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. It can take longer. 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 objections made by Environmental Health, Highways Planning

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and local residents and other persons who have made any representations, determining the application; either 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.

Reason for Decision 2

- 3.7 Setting the duration period of the licence at 6 months as a general benchmark would allow business to have a degree of reassurance that they have a licence for tables and chairs for a set period and allows them to have a stable operating model.
- 3.8 Because of the unique location of Westminster and the volume of premises which serve food and drink, Westminster businesses have made significant use of the pavement licence scheme. This has the potential to create a cumulative impact on residents and other premises such as entertainment premises who have large volumes of customers queuing to get into and dispersing from the Premises at any one time, so the Council considers it is reasonable and appropriate to generally grant pavement licences for no longer than 6 months at a time.
- 3.9 When the Business and Planning Act was introduced in 2020, pavement licences were issued for a 3-month period to allow time to understand what the impact of the new scheme would be. After the first 6 months, pavement licence duration was extended to 6 months. Requiring a renewal every 6 months gives local residents a degree of protection that, should the operating of the table and chairs be problematic, this can be addressed within a reasonable timeframe when the pavement licence comes up for renewal. It also allows the City Council to respond to the dynamic and evolving use of spaces and place-shaping around the city, and to respond to noise and ASB associated with the licence.

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

- 4.1 The Levelling Up & Regeneration Act makes the provisions for the pavement licensing regime permanent.
- 4.2 The Act also makes several amendments to the original scheme including:

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- Amends the fee 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.

4.2 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.

5 Financial Implications

5.1 In 2023/24 the Council determined 1705 pavement licence applications. In addition to that the Licensing Service 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 cover the cost of the administrative process.

5.2 With fees set at the maximum level and renewals continuing to be required every 6 months, this will be within current budgeted income along with offsetting the costs of the administrative process, inspection and enforcement.

5.3 Assuming the number of pavement licences remain consistent, with the licence fee set at the maximum, the future income forecast for the next financial year would be £770,000 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

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required to apply for a pavement licence. This could be represent a further £140,000 income annually.

6. Legal Implications

- 6.1 The Business and Planning Act 2020, as amended, allows the Authority to grant a pavement licence for any period up to two years. This means if any applicant applies for a longer duration the Council is required to consider the application on its merits.
- 6.2 When determining pavement licence applications, the Council must have regard to the Guidance issued by the Secretary of State.
- 6.3 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.
- 6.4 The Council will need to consider a number of factors when determining whether to approve or renew a pavement application, including (but not limited to):-
- Highway issues and whether there is sufficient space and accessibility for pedestrians, disabled and vulnerable persons and other highway users – 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:
 - 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.
 - public health and safety including security – for example, any reasonable crowd management measures needed as a result of a licence being granted.
 - public amenity – will the proposed use create nuisance to neighbouring occupiers by generating anti-social behaviour, and litter.

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6.5. The Council will also need to consider whether local and other conditions should be attached to address any impacts of granting or renewing the licence.

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

7. **Equality Implications**

7.1 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.

7.2 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.