

Report for: Licensing Committee

Item number: 8

Title: Business and Planning Act 2020 – made permanent under The Levelling Up & Regeneration Act 2023.- Fee setting

Report

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Ward(s) affected: All wards

Report for Key/

Non Key Decision: N/A

1. Describe the issue under consideration

- 1.1 The Business and Planning Act 2020 (the Act) came into force on 22nd July 2020 and was a temporary measure introduced to help businesses succeed by having a quicker cheaper more streamlined licensing process for placing tables and chairs on the pavement. The measures were put in place on a temporary basis until 30th September 2021, but have been extended by the Government a number of times pending the permanent legislation coming into effect.
- 1.2 The new legislation, was unexpectedly commenced on 31 March 2024 and was expected later in 2024. there is now an extended consultation application period and the potential to grant an application for up to two years under the new provisions.
- 1.3 In response to Covid, temporary legislation was introduced as part of a package of economic led reforms. The Business and Planning Act 2020 created the pavement licensing regime, along with other legislative measures. Haringey continued to provide a licensing scheme under the existing London Local Authorities Act 1990 which has been seldom used since the Pavement Licence provisions came into effect in 2020.
- 1.4 Pavement licences may be granted subject to such conditions as the Council considers it reasonable to impose and the Council may publish those conditions.
- 1.5 This report sets out the new fees to be adopted for pavement licensing and updated conditions to be applied to pavement licences that are granted and seeks approval for these matters.

2 Recommendations

- 2.1 The Committee is asked to:
- 2.2 To agree to set the fees at the statutory maximum, that is £500 for new applications and £350 for renewal applications set out in Appendix A.

- 2.3 Agree the pavement licence conditions as outlined in Appendix B which will be the Council's published standard conditions.
- 2.4 Note that the Licensing Authority can set further conditions as required on a case by case basis.
- 2.5 Agree that the length of the grant of the licence will be for 1 year only and that renewals will be required each year. If there are reasons for a shorter period may be determined on a case by case basis after discussion with Head of Service.

3 Alternative Options Considered

- 3.1 Do nothing – This is not an option as the legislation carries deemed consent if the authority fails to deal with an application.
- 3.2 The new provision requires a local authority to consider what fees are to be set for the application and renewal within the fee maximums provided. It also requires an Authority to determine if licenses will be issued for one or two years.

4 Reasons for decision

- 4.1 The Levelling Up & Regeneration Act became law in 2023, but the provisions to make the pavement licence scheme permanent were not immediately commenced.
- 4.2 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.
- 4.3 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 London Local Authorities Act 1990 and did not cover the Council's costs of processing, inspecting, monitoring and enforcing the pavement licensing regime. There was also no enforcement powers under the Act.
- 4.4 Processing a pavement licence application takes on average 4 hours for a renewal application and 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 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.
- 4.5 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.
- 4.6 Whilst the new fees would allow the council to recover the cost for processing these applications however, it will still not allow the full recovery of the cost of inspecting, monitoring and enforcing the pavement licensing regime.

- 4.7 The Act includes measures for enforcement and revocation powers so councils can protect public safety and amenity by adopting conditions to safeguard the business as well as the public
- 4.8 The local authority can add conditions to the pavement licence and must publish standard conditions which it proposes to add to all pavement licences.
- 4.9 If the pavement licence is deemed granted it will still be subject to the Council's published conditions.
- 4.10 In order to ensure that the pavement licences are managed properly and that there is a proper use of the pavement without detrimental effects on other users, conditions are necessary.

5 Background information

5.1 Pavement Licences Summary

5.2 The Council has been issuing pavement licences to businesses to facilitate outdoor dining under the Business and Planning Act 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 the Business and Planning Act 2020 going forward, we will no longer be using or allowing applications under the London Local Authorities Act 1990.

5.3 The legislation now has Enforcement powers and revocations powers to enable Councils to better protect communities and take action for non-compliance.

5.4 Since the introduction of the pavement licence scheme in 2020, these licences have been issued for a 1 year period in Haringey to help businesses with the recovery, other authorities have issued at 3 and 6 months intervals. The permanent legislation now permits up to 2 years at a time but for uniformity and to ensure we are reviewing any changes to the roadway. Haringey will continue to issue Pavement Licence on a yearly basis.

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

6.1 The Levelling Up & Regeneration Act makes the provisions for pavement licensing regime permanent. 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. 28 days process in total.
- 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.

6.2 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

6.3 National conditions imposed on all pavement licenses.

6.4 Section 5 of the Business and Planning Act 2020 specifies two national conditions. The National conditions which apply to pavement licences which are granted or deemed to be granted. These conditions are :

- a no obstruction condition and
- a smoke free seating condition.

6.5 A no obstruction condition is a condition that anything done by the licence holder pursuant to the licence, or any activity of other persons which is enabled by the licence, must not have an effect specified in section 3(6) of the Act.

Section 3 (6) states: The effects referred to in subsection (5) are –

- (a) Preventing traffic, other than vehicular traffic, from -
 - (i) Entering the relevant highway at a place where such traffic could otherwise enter it (ignoring any pedestrian planning order or traffic order made in relation to the highway),
 - (ii) Passing along the relevant highway, or
 - (iii) Having normal access to premises adjoining the relevant highway.

- A smoke free seating condition is a condition that, where the furniture to be put on the relevant highway consists of seating for use by persons for the purpose of consuming food or drink, the licence holder must make reasonable provisions for seating where smoking is not permitted.

6.6 Standard Conditions

6.7 Appendix B lists the proposed standard conditions prepared by the Council that will be attached to any licence granted to ensure that the pavement licence area and licence is appropriately managed by the licence holder. These include measures such as:

- Public health and safety - for example ensuring that uses conform with latest guidance on social distancing¹ and any reasonable crowd management measures needed
- Public amenity – to control nuisance to neighbouring occupiers by generating anti-social behaviour and litter; and
- Accessibility for pedestrians
- Requirement for public liability insurance
- Proof of right to occupy
- Risk assessments
- Damage to pavement to be made good by the licence holder

The full list of standard conditions attached as Appendix B, if approved, will be published on the Council's website.

6.8 Appeal Process

6.9 There is no prescribed appeal provision under this legislation. .

7. Contribution to strategic outcomes

7.1 The Statement of Gambling Act policy 2025-2028 will contribute to our fundamental themes and priorities **in The Corporate Delivery Plan 2023-24** which sets out a two-year vision to make Haringey one of London's greatest boroughs where families can thrive and succeed. The plan is organised around the following themes:

- a. Resident experience, participation and collaboration
- b. Responding to the climate emergency
- c. Children and young people
- d. Adults, health and welfare
- e. Homes for the future
- f. Safer borough
- g. Culturally Rich Borough
- h. Place and economy

7.2 Theme-2 Young People – *‘Our vision is a Haringey where strong families, strong networks and strong communities nurture all residents to live well and achieve their potential.’* The protection of people with disability and sight impairment from being unduly impacted will contribute to this priority.

7.3 Theme 4– Adults Health & Welfare- *Our vision is for a place with strong, resilient and connected communities where people can lead active and healthy lives in an environment that is safe, clean and green. As the borough continues to grow, becomes better connected and continues to be a destination for many Londoners, we will need to ensure Haringey remains a safe and pleasant environment for all. We want to work with partners and the local community to achieve this and to define and shape how the borough looks and feels, both now and in the future.* Residents engaging in the licensing process will contribute to this priority and allow them to have a say in how premises operate. The expectations set out in the Standard conditions will inform applicants for licences of the kind of best practice and responsible management expected for well-run premises in the borough.

7.4 Community Safety Strategy - The Community Safety Strategy presents Haringey's approach and priorities to achieving a reduction in crime and anti-social behaviors in Haringey up to 2027. The strategy is supported by a comprehensive strategic assessment that draws on data from across the partnership to identify trends, patterns, and drivers relating to crime and anti-social behaviors.

8 Statutory Officers comments (Chief Finance Officer (including procurement), Assistant Director of Corporate Governance, Equalities)

8.1 Finance

8.2 This report seeks the Licensing Committee's approval for the new pavement license fees to be adopted in Haringey in line with the revised legislation.

Procurement

N/A

9 Legal –

9.1 Assistant Director of Corporate Governance has been consulted in the preparation of this report and advises that apart from those set out below the legal implications are set out in the body of the report.

9.2 Once a licence pavement 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.

9.3 The Council will need to consider the following when determining applications for Pavement Licences:

- public health and safety – for example, ensuring that uses conform with latest guidance on social distancing and any reasonable crowd management measures needed as a result of a licence being granted and businesses reopening;
- public amenity – will the proposed use create nuisance to neighbouring occupiers by generating anti-social behaviour and litter; and
- 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:
 - 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 structures in place on the footway that already reduce access;
 - the recommended minimum footway widths and distances required for access by mobility impaired and visually impaired people as set out in Section 3.1 of [Inclusive Mobility](#), and
 - other users of the space, for example if there are high levels of pedestrian or cycle movements.

The proposed conditions have taken these factors into account.

10. Equality

10.1 The council has a Public Sector Equality Duty under the Equality Act (2010) to have due regard to the need to:

- Eliminate discrimination, harassment and victimisation and any other conduct prohibited under the Act
- Advance equality of opportunity between people who share protected characteristics and people who do not
- Foster good relations between people who share those characteristics and people who do not

10.2 The three parts of the duty apply to the following protected characteristics: age, disability,

gender reassignment, pregnancy/maternity, race, religion/faith, sex and sexual orientation. Marriage and civil partnership status applies to the first part of the duty.

- 10.3 Although it is not enforced in legislation as a protected characteristic, Haringey Council treats socioeconomic status as a local protected characteristic.
- 10.4 An equalities screening has been undertaken and identified people with disabilities and sight impairment are likely to be affected by this legislation. However, the conditions the Council is seeking to adopt will alleviate some of the concerns.
- 10.5 The EQiA has identified that people with a disability and sight impairment may be affected by this process, but the mitigation has been put in place by the Government with the no obstruction mandatory condition and Haringey's own conditions and safeguards to consider the safe pedestrian access to pavement for people from the affected group. The EQiA is at Appendix C.

Use of Appendices

Appendix A – Fees summary

Appendix B - Pavement Licensing draft conditions

Appendix C- EQiA

Local Government (Access to Information) Act 1985

The Business and Planning Act 2020

The Levelling Up & Regeneration Act 2023