

REPORT TO:	Licensing Committee 16 July 2024
SUBJECT:	Pavement Licensing The Business and Planning Act 2020 The Levelling Up and Regeneration Act 2023
LEAD OFFICER:	Corporate Director, Sustainable Communities, Regeneration & Economic Recovery
CABINET MEMBER:	Cllr. Scott Roche Streets & Environment
WARDS:	All
CORPORATE PRIORITY/POLICY CONTEXT/AMBITIOUS FOR CROYDON:	
<p>One of the key Outcomes of the Mayor’s Business Plan 2022-2026 seeks to ensure that <i>Croydon is a place of opportunity for business, earning and learning</i>. The covid pandemic had a significant financial impact on business nationally, notably the hospitality sector. The Government introduced ‘pavement licenses’ via the Business and Planning Act 2020 (“the 2020 Act”) in an effort to support hospitality businesses get back on their feet as they emerged from lockdown. This was a temporary provision. The Government, through The Levelling Up and Regeneration Act 2023 (“the 2023 Act”) has now made the availability of pavement licenses permanent.</p>	
FINANCIAL IMPACT	
<p>Under the permanent provisions in the amendments to the Business and Planning Act 2020, the maximum fee which may be set for a new pavement licence is £500. The maximum fee which may be set for the renewal of a licence is £350. These fees are less than the cost of provision of a licence however, the requirements of the 2020 Act and amendments made by the 2023 Act are statutory rather than discretionary and so the Council must make the facility available within the legislative parameters.</p>	

1. RECOMMENDATIONS
That the Licensing Committee:
<p>1.1 Delegate authority to the Corporate Director, Sustainable Communities, Regeneration & Economic Recovery to do all things necessary to implement and operate the permanent pavement licensing arrangements under The Business and Planning Act 2020 (as amended), including but not limited to the determination of standard conditions which apply, determining applications, revocation of licenses and authorising officers to enforce and exercise these functions.</p>

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| 1.2 | Set the duration of a Pavement Licence at one year and set the fee for an application for a new pavement licence at £500 and the fee for a renewal of a pavement licence at £350. |
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2. EXECUTIVE SUMMARY

- 2.1 This Report provides background to the request that the Committee delegate authority to the Corporate Director, Sustainable Communities, Regeneration & Economic Recovery to do all things necessary to implement and operate the permanent pavement licensing arrangements under The Business and Planning Act 2020 (as amended). It also recommends that the Committee set the duration of a pavement licence at one year and that the Committee sets the fee for an application for a new pavement licence at £500 and the fee for an application to renew a pavement licence at £350.
- 2.2 Members will recall that the temporary Pavement Licensing regime introduced under the Business and Planning Act 2020 was in force, following three extensions, until September 2024. However, the Government made amendments to the 2020 Act via The Levelling Up and Regeneration Act 2023 which has made the pavement licensing provisions permanent. This report details the permanent provisions.
- 2.3 In summary, the permanent provisions have an increased standard fee cap for both new and renewal licence applications, slightly increased consultation and determination periods relative to the temporary regime, a longer potential maximum duration of licenses and provides local authorities with new enforcement powers, including to remove unlicensed furniture.

3. DETAIL

- 3.1 The London Borough of Croydon is the licensing authority for a broad range of licensing legislation and licensable activities.
- 3.2 Members will be aware from previous reports to this committee in 2020, 2021, 2022 and 2023 (which can be accessed via the meeting pages on www.croydon.gov.uk) that the Business and Planning Act 2020 (the '2020 Act') was introduced on 22 July 2020 with arrangements for temporary pavement licensing, specifically as a result of the covid pandemic. These temporary arrangements were subsequently extended on three occasions and the current temporary arrangements cease on 30 September 2024 when they will be fully replaced by the permanent regime under amendments to the 2020 Act.
- 3.3 The legislation permits premises to apply for a pavement licence to place furniture outside, adjacent to their premises on the public highway. In this context, furniture means stalls for selling or serving food or drink, tables and chairs and articles such as umbrellas, barriers and heaters. Furniture that is not removable and used in connection with the outdoor selling or consumption of food or drink is not permitted by a pavement licence nor is placement of furniture, other than as specified in the Act, covered by a pavement licence. For example, items such as advertising boards are not included in the definition of furniture within the pavement licensing regime. It should also be noted that pavement licenses can only be granted in respect of certain types of highways - generally, these are footways restricted to pedestrians or are roads and places to which vehicle

access is restricted or prohibited. Highways maintained by Network Rail or over the Crown land are exempt (so a licence cannot be granted).

- 3.4 The application process for pavement licensing is intended to be streamlined and fast track compared to the process used for Street Trading but as indicated above, has statutory parameters for the types of premises and types of furniture which can be licensed under the pavement licensing regime. For member's information, Street Trading within London is predominantly regulated under the London Local Authorities Act 1990. Outside of London, the Highways Act 1980 and the Local Authorities (Miscellaneous Provisions) Act 1982 are relied upon.
- 3.5 Under the temporary regime there was a 7 day consultation period and a 7 day determination period. The permanent regime under the amended 2020 Act has increased the consultation and determination periods to 14 days each respectively, which means that the Council now has 28 days from the day after the application is made (excluding public holidays) to publish, consult on and determine an application. This is still significantly shorter than the normally used street trading legislation which has a 28 day consultation period and thereafter sufficient time for determination. The implications for the authority if it fails to determine the matter within the time frame is that the licence is deemed to be granted for a period of 2 years and the Council loses the ability to impose restrictions or bespoke conditions for the license applied for.
- 3.6 Accordingly, it is imperative not only that the Council has its processes and procedures in place in advance of 30 September 2024 but also that there is a sufficiently expedient means of allowing determinations to be made. It is for this reason, and the unfeasibility of setting up and undertaking a Licensing Committee meeting within the 14 days for determination for each and every such application, that a delegation to the Corporate Director is recommended as part of this report.
- 3.7 The 2020 Act now caps the fee which may be charged for applications at £500 for a new application and £350 for a renewal application. In addition, the maximum duration of licenses under the permanent regime is two years. Government guidance suggests that to help support local businesses, the expectation is that local authorities will grant licences for the maximum two 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. The new maximum fees are still lower in most cases than the fee the Council charges in respect of an annual street trading licence under existing legislation.
- 3.8 It is proposed that all existing pavement licence holders be invited to re-apply for a pavement licence in advance of the expiry of their current licence on 30 September 2024. The legislation anticipates that businesses who have had a temporary licence under the previous regime and are seeking a new licence should be treated as a renewal application if it is made by the same licence-holder, it is in respect of the same premises and it is on the same terms as the temporary licence. This means that the majority of pavement licenses are likely to be renewals.

Setting of fees:

- 3.9 To ensure that the Council can promote growth and protect the public which is inherent in the delivery of regulatory services such as Licensing, there is a need to ensure that regimes are adequately resourced. This requires funding, and it is an accepted principle that licensed activities should be paid for by those benefiting from the licensed activity, rather than drawing on the public purse. Where the Council has the flexibility to set local fees, it is done on a cost recovery basis so that the fees set reflect the costs to the authority of delivering the service in question. With a capped fee, as is the case for this regime, there is less flexibility to ensure that the fee charged reflects the cost to the Council.
- 3.10 In recommending the proposed fees, officers have considered the statutory guidance from the Department of Business, Energy and Industrial Strategy (BEIS) "UK Guidance on the Provision of Services Regulations" March 2021 and the non-statutory guidance from the LGA on locally set licensing fees. The former provides, in respect of fee setting by competent authorities under the regulations (such as the Council in relation to licensing fee setting), that the fees charged by a competent authority under an authorisation scheme must be reasonable and proportionate to the cost of the procedures and formalities under the scheme and must not exceed the cost of those procedures and formalities (regulation 18(4) of the Regulations). The latter non-statutory guidance recommends that in setting licence fees, matters such as administration, initial visits, liaising with other interested parties, management costs, local democracy costs (such as member decision making), on costs, the costs of developing policies and the setting and reviewing of fees are matters which impact on the administration costs of applying for a license.
- 3.11 It is proposed that the fee for a new pavement licence be fixed at £500 and that the fee for a renewal of a pavement licence be fixed at £350. These application fees are non-refundable even where an application is refused as they represent the costs for the Council in processing and considering the applications. These figures are recommended due to the cost to the Council of the time involved by relevant staff members in managing the overall application process (as detailed more fully in paragraph 3.13) which includes such matters as receiving and checking relevant forms and supporting information, associated correspondence, the consultation process, the consideration of the application and any relevant representations and the work around notifications which is relevant whether or not the application is granted.
- 3.12 Fees should be broadly cost neutral in budgetary terms, so that, over the lifespan of the licence, the budget should balance. Those benefitting from the activities permitted by the various licences should not, so far as there is discretion to do so, be subsidised by the general fund. To ensure that fees remain reasonable and proportionate it is necessary to establish a regular and robust review process. This has particular advantages in the early stages of a new licensing regime, where fees have been set on best guess estimates of the number of applications that will be received. Annual reviews allow for the fine tuning of fees and allow the council to take steps to avoid, subject obviously to the cap, either a surplus or deficit in future years. This will not immediately benefit licence holders where the licence has been granted for a number of years and paid for in a lump sum and for that reason, along with the reasons detailed in paragraph 3.13 it is recommended in this report that all licenses issued under the permanent pavement regime, both renewal and new, shall be granted for a duration of one

years.

Setting the length of licenses:

- 3.13 The pavement licensing provisions require input from different Council staff and this includes office based staff providing advice and processing applications, staff in other Council teams considering applications and deciding whether comments or objections are necessary and compliance officers visiting premises and checking the suitability of proposed display areas to ensure they are compliant with the terms of the application made, for example in respect of the area of public highway taken and also to ensure that the furniture to be used will be of suitable construction to ensure there are no risks to the safety of the public or the condition of the public highway and that there is no detrimental impact on the street scene. In addition, Croydon is undergoing significant change through regeneration and as part of this, roads and pavements are often subject to modification. With the drive towards more people friendly streets and less highway clutter, it is more important that licences are more frequently reviewed. Also, businesses can change hands frequently, so more regular renewals will help keep track of who is occupying premises and that the premises will not be compromising the non-obstruction statutory requirement as the street scene changes. In addition, as detailed in paragraph 3.12 above, more regular renewals will allow for reviews of the costs impacts to be taken at regular intervals and will provide scope to monitor and allow for the fine tuning of fees and allow the council to take steps to avoid, subject obviously to the cap, either a surplus or deficit in future years

Conditions and determinations:

- 3.14 The Council is able to establish and publish local conditions subject to which the Council proposes to grant pavement licenses. It is recommended in this report that the establishment and publication of these conditions be delegated to the Corporate Director in order that these arrangements can be in place in good time for those seeking to avail themselves of the permanent pavement licensing regime. In addition to any locally agreed conditions, the 2020 Act sets out two statutory conditions which apply to pavement licences which are granted or deemed to be granted; these are: a no-obstruction condition and a smoke-free seating condition. There are also powers for the Secretary of State to publish regulations setting out national conditions in addition to the statutory conditions. As yet, no national conditions have been published.
- 3.15 In determining applications, the main matters the Council need to consider are set out in the Act and guidance and include the amount of available pavement to allow passers-by free, clear access and egress to/from and access along the pavement, especially wheelchair users, those with reduced mobility and the visually impaired and ensuring that there is no obstruction of statutory undertakers, utility providers or operators of an electronic communications code network in having access to any apparatus of theirs kept, installed, under, in, on or over the highway. The guidance published regarding pavement licensing also recommends that when considering public health and safety, local authorities should seek to ensure a balanced consideration for security implications, particularly the risk to groups of people from interaction with hostile vehicles, and the creation of large crowds in new public spaces. The impact of several pavement licences in an area may result in larger, distributed, or dense crowds

of people. Local authorities should factor this into the security planning process and ensure the overall security arrangements for an area are adapted as appropriate. Examples of appropriate measures could include increased CCTV surveillance, manned guarding, vehicle security barriers and ACT (Action Counters Terrorism) training for businesses.

- 3.16 The current expiry date for temporary pavement licenses granted by the Council is 30 September 2024. For the reasons detailed earlier in this report, this report seeks authorisation, via a delegation of authority to the Corporate Director, Sustainable Communities, Regeneration & Economic Recovery to do all things necessary to implement and operate the pavement licensing arrangements under the Business and Planning Act 2020, as amended by The Levelling Up and Regeneration Act 2023, including but not limited to the determination of standard conditions which apply, arrangements for publication as required under the Act, determining applications made (at the fees and at the duration set by the Licensing Committee), revocation of licenses and authorising officers to enforce and exercise these functions.

4. CONSULTATION

- 4.1 There are no consultation requirements associated with this matter.

5. FINANCIAL AND RISK ASSESSMENT CONSIDERATIONS

1 Revenue and Capital consequences of report recommendations

The Revenue from pavement licence applications is used to support the provision of the service. The current fee of £100 is not sufficient to cover the Council's administrative costs in processing & issuing licenses. The Council currently has 81 pavement licenses issued. The new maximum fee for the renewal of a pavement licence is £350 and the maximum fee for a new licence application is £500. The administrative costs to the Council of processing renewal and new applications are greater than these figures and so the recommendation is that these maximum fees are charged. There are no Capital considerations.

2 The effect of the decision

If the recommendations in the report are approved the Council will recover a greater amount of its costs in administering pavement licence applications. If the recommendations are not approved the Council will continue to subsidise licence holders but to a greater degree.

3 Risks

If the recommendations in this report are not approved the Council will not be able to process applications through the delegated authority sought and the time permitted to process applications will be insufficient to bring applications before the Council's licensing committee. If the Council fails to consider applications within the statutory timeframe licenses will be granted by default for two years. The Council will also lose the ability to attach bespoke conditions. The Council would not be fulfilling its statutory duty and would risk future income for the council.

4 Options

As this is a statutory requirement under the Business and Planning Act 2020 (as amended) there are no current alternative options to be considered.

5 Future savings/efficiencies

There are no future anticipated efficiencies from this paper. The fees are fixed at a statutory maximum of £350 and £500 and this report recommends that fees are set at those levels and it will be necessary to assess future financial impacts.

Approved by: William Zellerbach, Finance Manager SCRER, on behalf of Zaber Ahmed, Head of Finance SCRER 08/07/2024.

6. LEGAL CONSIDERATIONS

6.1 Part 1 of The Business and Planning Act 2020, as amended by the Levelling Up and Regeneration Act 2023, sets out the statutory parameters of the permanent pavement licensing regime (Sections 1-10). These detail the types of matters which the regime is designed to cover, the application process, maximum fees and durations, the publication of applications, the time frames within which publication, notification and determination must take place as well as the statutory conditions which apply to such applications if granted and the ability for the Secretary of State to impose national conditions by regulation. No such regulations have been published to date. The statutory provisions also allow the Council to determine local conditions which apply to such pavement licenses. These may be either standard local conditions or, if the circumstances warrant, bespoke local conditions for the license in question. These provisions are detailed more fully in section 3 of the body of the report above.

6.2 In undertaking the functions under the 2020 Act, the Council is required to have regard to the guidance issued under Section 8 of the Act by the Secretary of State. The Guidance "Pavement Licenses: Guidance" was updated on 2 April 2024.

6.3 The permanent provisions (pursuant to section 7A to the 2020 Act) introduces new enforcement powers for local authorities in respect of notices for failure to comply with the regime requirements, removal of unauthorised furniture and associated matters.

6.4 Section 7 of the Act sets out the effects of the permanent pavement licensing regime which include that:

- a pavement licence authorises the restriction, by anything done by the licence-holder pursuant to the licence, of public access to the part of the relevant highway to which the licence relates.
- a pavement licence constitutes deemed planning permission for anything done by the licence-holder pursuant to the licence—(a) which is development requiring planning permission under Part 3 of the Town and Country Planning Act 1990, and (b) for which there would otherwise not be planning permission or deemed planning permission.

- anything done by the licence-holder pursuant to a pavement licence is not street trading for the purposes of — (a) Schedule 4 to the Local Government (Miscellaneous Provisions) Act 1982 (street trading), (b) Part 3 of the London Local Authorities Act 1990 (street trading), or (c) any other enactment under or by virtue of which street trading without a licence or other form of permission is unlawful.
- 6.5 The statutory guidance indicates that when setting local conditions and determining applications, issues authorities will also want to consider include:
- 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;
 - 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;
 - 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.
- 6.6 Pursuant to Part 3 of the Constitution, the Licensing Committee is responsible for all licensing, registration and related functions as set out in Schedule 1 of the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 as amended ("Functions and Responsibilities Regulations"). The functions relating to pavement licensing under the Business and Planning Act 2020, as amended, are such licensing functions (paragraph 73 of Schedule 1).
- 6.7 Unlike certain licensing matters, including certain functions under the Licensing Act 2003, the Licensing Committee is able to delegate the performance of the pavement licensing functions to officers to undertake and authority is sought by way of this report for such delegation particularly given the short time frames within which such decisions need to be made to avoid the consequences of a deemed grant which would not have any local conditions attached and would automatically be granted for a period of two years (see paragraph 3.5 above).
- 6.8 The remaining legal considerations, in particular around fee setting (see paragraphs 3.9 to 3.12) are addressed within the body of the report.

Comments approved by Kiri Bailey, Head of Commercial, Housing and Litigation and Deputy Monitoring Officer on behalf of the Director of Legal Services and Monitoring Officer (8 July 2024).

7. HUMAN RESOURCES IMPACT

7.1 There are no human resources implications associated with this report.

8. EQUALITIES IMPACT

8.1 The Equality Act (2010) requires public bodies, in the exercise of their functions, to have due regard to the need to:

- eliminate unlawful discrimination, harassment, victimisation and any other conduct prohibited by the Act;
- advance equality of opportunity between people who share a protected characteristic and people who do not share it; and
- foster good relations between people who share a protected characteristic and people who do not share it

(generally referred to as the Public Sector Equality Duty).

8.2 The protected characteristics covered by the Act are age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation.

8.3 The guidance issued by the Secretary of State in respect of pavement licensing regime indicates that, in addition to Local authorities having regard to the Public Sector Equality Duty, under the Equality Act 2010 when devising and implementing the regime, any businesses which apply for a pavement licence will also need to have regard to their own duties under the Equality Act 2010, such as their duty under section 29 of the Act not to discriminate in providing their service and the duty to make reasonable adjustments.

8.3 The recommendations are to set fees, the term of licenses and to authorize, on a permanent basis, the exercise of delegated authority by the Corporate Director in relation to pavement licensing.

8.4 There is therefore no indication that the recommendations will have a disproportionate impact on any individuals or groups with a shared protected characteristic.

Comments approved by Ken Orlukwu, Senior Equalities Officer, on behalf of Helen Reeves, Head of Strategy & Policy on 27/06/2024.

9. ENVIRONMENTAL IMPACT

9.1 There are no perceived environmental impacts associated with this report.

10. CRIME AND DISORDER REDUCTION IMPACT

10.1 There are no perceived crime and disorder implications associated with this report.

11. DATA PROTECTION IMPLICATIONS

11.1 WILL THE SUBJECT OF THE REPORT INVOLVE THE PROCESSING OF 'PERSONAL DATA'?

NO

(Approved by: Karen Agbabiaka, Director of Streets & Environment)

CONTACT OFFICER: Michael Goddard, Head of Environmental Health, Trading Standards and Licensing Ext. 28259

APPENDICES TO THIS REPORT

None

BACKGROUND DOCUMENTS: None