


Agenda Item No:	8	
Committee:	Licensing	
Date:	10 July 2024	
Report Title:	Business and Planning Act 2020 – Pavement Licence	

Summary

- This report is to explain the changes to the temporary pavement licensing regime under the Business & Planning Act 2020 and the impact of the changes to this regime made by the Levelling-Up and Regeneration Act 2023.
- New legislation has come into force on 31 March 2024 to make permanent changes to the temporary pavement licensing regime, under the Business & Planning Act 2020 and has introduced changes including a new capped level fee structure for new and renewal applications.
- The Business and Planning Act process provides a streamlined and cheaper route for businesses such as cafes, restaurants, and bars to secure a licence to place furniture on the highway. This will provide much needed income for businesses and protect as many hospitality jobs as possible, particularly during times of increasing living costs.

Key Issues

- Section 229 of and schedule 22 of the Levelling Up & Regeneration Act 2023 (LU&RA 2023) amends the Business & Planning Act 2020 to make the provision of temporary pavement licences permanent. The commencement date for this amendment was 31 March 2024.

Recommendations

- That the Licensing Committee take note of the changes to temporary pavement licensing and proposed transitional arrangements and agree:
- That the fee for applications be charged at the set amount in the table below:

	Fee A - Up to a maximum of 3 Tables and/or 12 chairs	Fee B - Over 3 tables and/or 12 chairs
New Licence for up to 2 Years	£350	£390

Renewal Licence for up to 2 Years	£250	£290
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- The length of licence be granted for 2 years or less by exception only.
- Any appeal following refusal of an application or revocation of a licence to be referred to the Licensing Sub-Committee.

Wards Affected	All
Forward Plan Reference	N/A
Portfolio Holder(s)	Councillor Hoy, Cabinet member with responsibilities for Licensing.
Report Originator(s)	Michelle Bishop, Licensing Manager. mbishop@fenland.gov.uk
Contact Officer(s)	Amy Brown, Assistant Director abrown@fenland.gov.uk Peter Catchpole, Corporate Director, 01354 654321, pcatchpole@fenland.gov.uk
Background Papers	Government Guidance updated 02 April 2024; Pavement licences: guidance - GOV.UK (www.gov.uk) The commencement Regulations - The Levelling-up and Regeneration Act 2023 (Commencement No. 3 and Transitional and Savings Provision) Regulations 2024 (legislation.gov.uk) Legislation updated 10 August 2023: The Business and Planning Act 2020 (Pavement Licences) (Coronavirus) (Amendment) Regulations 2023 (legislation.gov.uk)

Report:

BACKGROUND AND INTENDED OUTCOMES

- 1.1 Temporary Pavement Licences were introduced by the Business & Planning Act 2020 (BPA 2020) on 19 August 2020 to streamline the process of obtaining a pavement licence and help businesses during the Covid pandemic.

Section 229 of and schedule 22 of the Levelling Up & Regeneration Act 2023 (LU&RA 2023) amends the Business & Planning Act 2020 to make the

provision of temporary pavement licences permanent. The commencement date for this amendment was 31 March 2024.

1.2 From 31 March 2024 the process for issuing temporary pavement licences under the BPA 2020 became permanent under the LU&RA 2023. A letter and guidance from the Department for Levelling Up, Housing & Communities was issued to all Local Authorities in England on 2 April 2024. A copy of the letter can be found at **APPENDIX A** and the Government Guidance is attached as a link to this report.

1.3 The main changes to temporary pavement licensing as a result to the amendment to the BPA 2020 are as follows:

- The introduction of maximum standard capped fees for new and renewal applications. The fee levels are capped at a maximum amount of £500.00 for new applications and £350.00 for renewal applications.
The fee applicable for a temporary pavement licence was previously £100.00.
- The duration of the consultation and determination periods have increased from 7 days to 14 days for each.
- The maximum term a licence can be granted has increased to 2 years (from one-year previously).
- The new guidance makes clear that a minimum width of 2000mm clear space should be provided between the furniture and edge of the footway. However, if this is not possible due to physical constraints then a minimum width of 1500mm could be regarded as the minimum acceptable distance.
- Pavement licences will be issued with, mandatory, national and local conditions. The mandatory conditions and local conditions can be found at **APPENDIX B** (subject to slight amendment).
- Local Authority now have the enforcement powers to remove furniture from the Highways linked to unlicensed use.

2 TRANSITIONAL ARRANGEMENTS

- 2.1 The licensing team currently manages a total of 8 pavement licences, of which all of these were issued before 31 March 2024 and therefore were licensed under the BPA 2020.
- 2.2 These licences will expire on 30 September 2024 in line with the guidance issued from Government last year.
- 2.3 We have already amended our webpages and following approval today will contact our current licence holders to advise them on the changes and how they can re- apply in readiness for end of September 2024 to ensure a smooth transition.

3 IMPACT OF THE CHANGES

- 3.1 It is important for Members to be aware of the amendment to the BPA 2020 and the possible impact the changes may have on the licensing team.
- 3.2 Members to note the attached guidance - [Pavement licences: guidance - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/pavement-licences)
- 3.3 Members to note Section 7 of the guidance 'Enforcement and to be aware of possible circumstances where the local authority may enforce or revoke a licence and the possibility of removing furniture from the highway, see section 7.2 '*When can furniture be removed?*

4 CONSULTATION

N/A

5 ALTERNATIVE OPTIONS CONSIDERED

- 5.1 We have considered charging the maximum fees of £500/£350 respectively but think this is better option for local businesses.

6 IMPLICATIONS

6.1 Legal Implications

The legislation does not have a statutory right of appeal, any appeal would be heard by the Licensing Sub-Committee

6.2 Financial Implications

Whilst we are suggesting to not charge the maximum allowed as per the legislation for an application, we have carried out a cost base analysis that will be reviewed annually in line with our fees and charges.

6.3 **Equality Implications**
N/A

7 SCHEDULE OF APPENDIX

Appendix A – Government Guidance
Appendix B – Licence Conditions



Department for Levelling Up,
Housing & Communities

Marsham Street
London
SW1P 4DF
pavementlicensing@levellingup.gov.uk

All Council Leaders and Chief Executives of
English local planning authorities

2 April 2024

Dear [x]

**PERMANENT PAVEMENT LICENSING REGIME
LEVELLING UP AND REGENERATION ACT 2023 COMMENCEMENT**

On 31 March 2024, we commenced the pavement licensing provisions laid out in the Levelling Up and Regeneration Act 2023. The provisions introduce a permanent pavement licensing regime in England to replace the temporary provisions introduced by the Business and Planning Act 2020. This permanent regime retains the key features of the 2020 regime, intended to streamline processing and reduce costs, but also incorporates some changes, outlined below, to ensure the long-term sustainability of the model.

Amendments set out in the LURA 2023

The LURA introduces several new pavement licensing provisions:

Firstly, the fee cap for a pavement licence application is increasing. It will no longer be capped at £100 but instead be capped at £500 for first time applications and £350 for renewal applications, subject to each local authority deciding the level of fee up to the cap. The increase and fee cap intend to balance both local authority and business interests. This increase in fee cap is intended to allow local authorities to recover the costs of processing, monitoring and enforcing licences.

Under the permanent regime, local authorities will now also be able to grant pavement licences for a length of their choosing up to a maximum of two years. As set out in the updated guidance, we encourage local authorities to grant businesses the maximum two years unless there is a good reason to do otherwise.

The 7-day consultation and 7-day determination periods provided under the temporary regime, will be extended to 14 days for each. This change has been made to reflect asks from local authorities to have a reasonable time to process applications; while balancing

businesses' need for a quick determination; and the need of members of local communities, particularly those with disabilities, to have a sufficient time to input, in mind.

Finally, the new pavement licensing provisions under the LURA 2023 grants local authorities' new enforcement powers. From the commencement date, local authorities will now, with the consent of the licence-holder, be able to amend the licence in certain circumstances. Local authorities will also be able to give notice to businesses who have placed furniture on the relevant highway without the required licence. If furniture continues to be placed on the highway, in contravention of the notice, the authority may remove and store the furniture, recover the costs from the business for the removal and storage of the furniture, and refuse to return the furniture until those costs have been paid. If within three months of the notice being served, the costs are not paid, the authority can dispose of the furniture by sale or other means and retain the proceeds.

Additional smaller changes in the guidance

Along with the amendments to the pavement licensing regime under the LURA 2023, we have made several minor changes to the guidance to clarify certain points within it and make it more comprehensive and considerate of the various groups affected by the regime.

We have clarified section 4.1 of the guidance, which sets out what local authorities, when considering the needs of disabled people, should assess when they set conditions, determine applications, and consider whether enforcement action is required. The previous guidance interpretation [Inclusive Mobility](#) was misleading. New guidance makes clear that under normal circumstances a width of 2000mm is the minimum that should be provided. In cases where this is not possible, a width of 1500mm could be regarded as the minimum acceptable distance. Though, local authorities should take a proportionate approach when measuring this.

In addition to this change we have also flagged that when considering the no obstruction condition licencing offices should be mindful of the cumulative impact of multiple pavement licences and the potential impact this could have on disabled pavement users.

Following feedback, we have provided more clarity on which types of furniture are permissible under this pavement licensing regime. Licences granted under this provision are exclusively for the use of furniture pertaining to the consumption of food and drinks, for example, tables and chairs. Other furniture, such as advertising boards, are not included. This furniture must be removeable.

Transitional Arrangements

The new pavement licensing provisions came into effect on 31 March 2024. Along with the renewals process introduced under the new regime, there are transitional arrangements in place to ensure the transition from the temporary regime to the permanent one is a smooth one for the entire sector.

Existing licence-holders can retain their licences granted under the temporary regime until the expiration date on their licence. After these existing licences expire, on or after 31 March 2024, businesses can reapply under the renewals process and be charged up to the

maximum renewal fee of £350, subject to the local authority deciding the level of fee up to the cap.

Existing licences with no fixed end date will be extended for two years from the commencement date and licences that were deemed to be granted due to the local authority not being able to determine the application on time, will also be extended for two years from the commencement date.

Applications submitted to the local authority on or before 30 March 2024 but determined on or after 31 March 2024 will be subject to some of the arrangements of the temporary regime, namely the 7-day consultation and 7-day determination periods and the up to £100 application fee. However, they will benefit from the new maximum duration of up to two years.

Applications determined before 31 March 2024, will be subject to the new enforcement power under the permanent regime, which grants authorities the power to amend the licence in certain circumstances with the licence-holder's consent.

You can access the updated guidance, which outlines the changes and transitional arrangements, [here](#).

For any queries, do reach out to pavementlicensing@levellingup.gov.uk.

We hope that these amendments are welcomed, and we look forward to continuing to work together to make this process as practical as possible.

**STANDARD PAVEMENT LICENCE CONDITIONS & REQUIREMENTS**

The Business and Planning Act 2020 (Pavement Licences)

The following will be applied to every licence deemed and granted under the above Act:

Standard conditions:

1. No-obstruction condition – The Licensee must ensure that a clear route of access along the highway is kept clear, by;

- ensuring a range of recommended widths in section 3.2 of Inclusive Mobility are met. This will take into account the needs of particular pavement users, including mobility impaired and visually impaired persons, where in most circumstances a recommended minimum width of 1500mm of clear space between an obstacle and the edge of the footway is kept;
- considering any barriers used to separate furniture from the rest of the footway. For example; using a tap rail for long cane users, or barriers and furniture with contrasting colours;
- maintaining principal lines of pedestrian movement for disabled people, older people and those with mobility needs. Principle routes should be entirely clear and should not pass through an area with tables and chairs;
- ensuring the furniture is non-reflective, and constructed so that it cannot be easily pushed, or blown over by wind. You cannot use plastic patio furniture, unless counter measures are taken to ensure these are stable.

2. Smoke-free seating condition – This condition requires when furniture is used on the relevant highway it provides customers a greater choice and option for both smokers and non-smokers to sit outside; when consuming food or drink. The licence holder must make reasonable provision and meet this condition by;

- providing clear 'smoking' and 'non-smoking' area, with appropriate smoking signage that meets the Smoke-free (Signs) Regulations 2012.
- No ash trays shall be left on tables in designated non-smoking zones.
- Licence holders should provide a minimum distance of 2 metres between smoking and non-smoking area, where possible.

Local conditions:

3. This licence is granted in accordance with the advice given in the guidance notes issued at the time of application.



4. The licence is issued to the applicant only and is not transferable.
5. The licence holder shall refrain from placing tables and chairs and other authorised furniture on the highway for so long as may be necessary in the case of a planned event, when reasonably required to do so by a duly authorised officer of the Council, a police officer or an officer of any other emergency service.
6. No tables and chairs or barriers may be placed in the area until a licence has been granted.
7. No other items may be placed on the highway within the licensed area other than that approved in accordance with the application and the licence when granted.
8. Furniture placed on the pavements after the granting of a licence must be in accordance with the details and plans provided at the time of the application. No changes are permitted without prior approval from Fenland District Council.
9. The amenities must be removed from the public highway at the end of the permitted period each day.
10. The Licensee shall maintain a public liability insurance policy up to the value of £5 million pounds against any liability, loss or damage, claim or proceeding whatsoever arising under Statute or Common law in respect of the placing and maintaining of the tables and chairs on the highway or their removal there from.
11. The Licensee shall be responsible for keeping the designated area in a clean and tidy condition at all times. It is your general duty of care to ensure that any waste produced is handled safely and in accordance with the law. You must keep all waste safe, prevent it from escaping from your control and ensure that it is only handled, or dealt with by persons that are authorised to deal with it.
12. The Licence holder must comply with any request to allow highway maintenance and any other necessary remedial work to be carried out at the location covered by the licence. The Licence Holder must also comply with any request to remove the furniture due to an emergency situation or special event. A reasonable period of notice will be given to the licensee where possible. Fenland District Council and/or The Highway Authority will not be liable for any loss of earnings arising out of use of a licence whilst complying with request.
13. Any umbrellas provided must not protrude beyond the designated boundary of the licensed area. They shall be kept in good condition so as not to detract from the appearance of the street, and also must be adequately secured. You are advised that enclosed structures (including gazebos) and the like will not be permitted within the proposed boundary of the licensed area.

14. If you intend to use space heaters, their metric dimensions, materials and colour must be specified as part of the application. You will also be required to submit a formal risk assessment as required by the Management of Health and Safety at Work Regulations 1999 in support of your application. The equipment used should also meet commercial standards and any specifications of relevant British Standards. This should be carried out by a person trained and deemed competent under health and safety law. In considering an application, the Council will have regard to the inherent safety of the equipment, its location, storage of Liquid Petroleum Gas Cylinders, maintenance and training arrangements. Fenland District Council will consider the adequacy of the risk assessment which must:

- Identify the hazards e.g. fire, explosions, burns, impact from falling equipment/cylinders
- Decide who may be harmed and how
- Evaluate the risks and decide whether proposed precautions (control measures) will need implementing and be adequate, or whether more could be done.
- Record findings, review assessment and revise on an annual basis or more frequently if the situation requires it e.g. a significant change in equipment, etc.

15. In areas of significant footfall (to be determined by Fenland District Council), when in use, the pavement licence designated area will need to be enclosed, to demarcate the licensed area and contain the specified furniture, thus making it distinguishable to other pavement users, and to assist blind and visually impaired pedestrians.

16. No form of entertainment (incl. background music) is permitted in the licensed area, this includes the placing of speakers, or any other equipment, to amplify the sound.

17. During the hours of limited light, suitable and sufficient lighting must be provided to ensure safe use of the area. Any proposals to provide additional lighting to the licensed area must first be approved in writing by the Council.

18. Any material alteration to the Means of Escape, which affects people using the Means of Escape, inside or in the immediate vicinity outside the premises must be recorded in the premises' Fire Risk Assessment as a significant finding. Control measures should be put in place to reduce risk within the area as well as recording them. A review of the hazards and risks should be on going throughout the period the premises are in use.

19. This Licence covers the use of amenities by customers for consuming food or refreshment which have been purchased from the licenced establishment. This Licence does not permit the use of the amenities for any other purposes at any time.

20. No additional charge shall be made to customers for the use of the tables and chairs within the licensed area.
21. The licensee may only use the land for the placing of specified furniture in the course of his business only during the hours permitted by the licence and only within the defined area applied for.
22. No other items may be placed on the highway within the licensed area other than that approved in accordance with the application and the licence when granted.
23. The licence is granted for the period specified on the licence.
24. The licensee is responsible for carrying out the reinstatement of the highway in the event of any damage to the highway occurring as a result of the activity (if requested to do so by the Highway Authority). The permanent surface reinstatement shall be carried out to the satisfaction of the Highway Authority.
25. These conditions may be varied where appropriate to reflect any changes in local areas and will come into effect upon written notification by the Council.
26. The footway must not be obstructed by patrons standing between tables, chairs and the kerb, or by the personal possessions of patrons.
27. Periodic inspections of premises granted with Pavement Licences will be made by the Council to ensure compliance with the Pavement licence conditions and Guidance.
28. No alcohol is to be sold or consumed from the designated area identified unless that sale and/or consumption is approved under the Licensing Act 2003 which includes any temporary authorisations for the sale of alcohol permitted pursuant to the Business and Planning Act 2020 (as amended).
29. There is no automatic right to appeal against refusal of licence grant.
30. The Licensing Authority may withdraw this consent at any time upon giving the licensee seven days' notice in writing. Upon withdrawal of the consent the licensee shall remove the amenities from the public highway, and, in default, the Local Authority may remove the amenities and recover from the licensee its cost in doing so.