

Royal Borough of Kensington and Chelsea

For decision by the Director of Highways and Regulatory Services

**PERMANENT PAVEMENT LICENSING PROVISIONS
BUSINESS AND PLANNING ACT 2020 AND THE
LEVELLING UP AND REGENERATION ACT 2023**

Proposed Fees and Duration of Pavement Licences



THE ROYAL BOROUGH OF
**KENSINGTON
AND CHELSEA**

1. SUMMARY

- 1.1 The Government introduced pavement licences under the Business and Planning Act 2020 as an emergency measure to provide a streamlined and cheaper route for premises providing food and drink to place furniture on the public highway, with minimal bureaucracy. For a maximum £100 application fee, a licence could be sought to place pavement furniture on the highway up to a period of 12 months and no less than three months.
- 1.2 The Levelling up and Regeneration Act 2023 made permanent the pavement licensing regime under the Business and Planning Act and modified the Act in respect of;
- fees (up to £500 for new/first time licences and £350 for renewals)
 - application process (extended consultation and determination times)
 - licence duration (maximum 2 years)
 - enforcement (new powers to remove unlicensed furniture)
- 1.3 At its meeting on 12 March 2024, the Licensing Committee resolved that as the date for the implementation of the proposed pavement licensing changes was unlikely to coincide conveniently with a scheduled meeting of the Licensing Committee, any pavement licensing fees be set by the Director of Transport and Regulatory Services in consultation with the Chair of the Licensing Committee. A copy of the report considered by the Licensing Committee and a copy of the approved minutes are attached as Appendix A.
- 1.4 The purpose of this report is to seek approval for the setting of fees for pavement licences and the duration for licences issued in respect of both new and renewal applications.

2. REASONS FOR DECISION

- 2.1 The permanent pavement licensing regime and changes provided for in Levelling Up and Regeneration Act 2023 came into effect on 31 March 2024. As mentioned above, under the new provisions, a pavement licence can be granted for a maximum period of two years. There is no minimum licence duration. The local authority has discretion to set a standard pavement licence length (up to two years) and can grant pavement licences of differing durations

depending on the circumstances. As each pavement licence application will attract an application fee, the frequency of such applications will greatly influence workload and application fee income.

- 2.2 The decision of the Supreme Court and the European Court of Justice in the Hemmings case in 2016, (which related to the level of fees for Sex Shop Licences in Westminster and what the Council was legally entitled to include when setting its fees), established that when setting fees, authorities can recover the costs of processing and granting the application, in addition to the costs of monitoring and enforcement of the licensing regime, provided the fees were charged in two parts. Although the fees were set and capped by the Government after engaging with local government officers on processing cost, the rules of Hemmings would still apply as the Council has a degree of discretion as to how much to charge. If the Council's costs exceed the maximum then we should charge the maximum. The Team's processing costs from acceptance to the issuing of a licence is approximately £664, but this figure is based on an application being deemed correct and valid upon receipt. The majority of applications that are received are deemed invalid on initial receipt, due to the information supplied being incorrect or insufficient, requiring officers to liaise with the applicant to get the application amended before being resubmitted

3. FEES AND DURATION OF LICENCES IN OTHER AUTHORITIES

- 3.1 Officers have undertaken a survey of several neighbouring authorities to identify the fees they propose to charge and the licence duration for new applications. A table detailing this information can be found below. This information is correct as of 30 July 2024.

Table 1

Name of Authority	Fee Charged (Fee between £1 to £500)	Length of initial Licence/New grant	Notes (e.g. Licence granted for 3 months initially etc)
Westminster	£500	6 months	Granted for 3 months and no more than 6 months
Brent	New - £500	1 year	
Wandsworth	£446.20	12 months	
Southwark	New - £500	12 months	
Bromley	New - £500	1 year	
Islington	New - £500	6 months	
Camden	New - £500	1 year	

- 3.2 It should be noted that none of the local authorities where officers were able to obtain information relating to pavement licences, are issuing new pavement

licences for longer than a year. The duration of renewal applications appears to be of the same length as new/first time licences. Officers have been unable to obtain confirmation of the fees and duration from London Borough of Hammersmith, City of London and the Royal Boroughs of Kingston Upon Thames and Greenwich.

4. PROPOSED FEES AND DURATION OF LICENCES

- 4.1 As mentioned in paragraph 2.1, the local authority has the discretion to set a standard pavement licence length (up to two years) and can grant pavement licences of differing durations.
- 4.2 Officers propose that the fee for new/first time licences should be in line with other local authorities and propose that new/first time licences should be issued for a duration of 1 year with the fee being £500.
- 4.3 Certain streets within the Borough are subject to noise and nuisance complaints largely due to the number of pavement licences and summertime terraces within that street. In addition, the majority of our licensed premises are in close proximity to residential premises so the potential for noise disturbance from the use of outside areas remains high. Officers therefore consider that at the current time the duration for renewals and any other application in relation to an existing licence made by the existing licensee should also be for 1 year and that the fee should be set at the maximum of £350, to recover as much of the processing costs as possible. Although the Levelling Up and Regeneration Act 2023 gives local authorities new enforcement powers including the ability to remove licensed pavement furniture from the highway, following a notification process, that process has yet to be fully tried and tested.
- 4.4 The proposed fees and duration of licences is set out in Table 2 below.

Table 2

Fee for new/first time licences	<i>£500</i>
Duration	<i>1 year</i>
Fee for Renewals and any other application in relation to an existing licence made by the existing licensee	<i>£350</i>
Duration	<i>1 year</i>

- 4.5 The proposed fees are set at a level to recover the cost for processing an application, issuing a licence and running the licensing regime, as far as possible. If the fees are reduced, then such costs would have to be borne by the authority.

5. EQUALITIES IMPACT

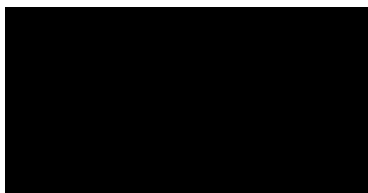
- 5.1 The recommendations in this report have no equalities implications

6. LEGAL IMPLICATIONS

6.1 There are no additional legal implications other than those already provided within this report.

7. RECOMMENDATION

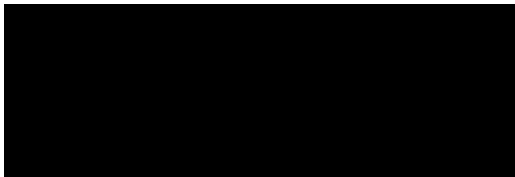
7.1 I recommend that the above fees be approved with immediate effect. Once approved the fees will be subject to an annual review each year in line with the Council's Policy and from hereon will be included on the annual fees report to the Licensing Committee



Licensing Team Manager

Date 31 July 2024

I hereby approve the above recommended fees and duration for licence applications under the Business and Planning Act 2020 and the Levelling up and Regeneration Act 2023 with immediate effect



Director of Highways and Regulatory Services

Date 31 July 2024

THE ROYAL BOROUGH OF KENSINGTON AND CHELSEA

LICENSING COMMITTEE - 12 MARCH 2024

THE DIRECTOR FOR TRANSPORT AND REGULATORY SERVICES

PERMANENT PAVEMENT LICENSING PROVISIONS
THE LEVELLING UP AND REGENERATION ACT 2023

This report highlights the permanent provisions for pavement licensing expected to be introduced under the Levelling Up and Regeneration Act 2023 later this year and seeks approval to delegate authority to the Director of Transport and Regulatory Services.

FOR DECISION

1 BACKGROUND

- 1.1 The Government introduced pavement licences under the Business and Planning Act 2020 (the 2020 Act) as an emergency measure to permit hospitality businesses to operate on-street with minimal bureaucracy. For a maximum £100 application fee, a licence could be sought to place pavement furniture on the highway for a period of approximately one year. The application process involved a one-week consultation period. The application has to be determined within two weeks of the application date, failing which the application is deemed granted. Local authorities could grant applications up to a period of 12 months and have the discretion to grant pavement licences for shorter periods of no less than three months.
- 1.2 The Levelling up and Regeneration Act 2023 (the 2023 Act) modifies the 2020 Act in respect of;
- fees,
 - application process,
 - licence duration and,
 - enforcement.

Fees

- 1.3 Once the Act takes effect, the application fee for an existing licensee seeking to renew their consent can be set up to a maximum value of £350. For new applications (including applications from previous licensees whose licences have expired) the application fee can be set up to a maximum value of £500. Officers expect most local authorities to apply the maximum fee levels to ensure the costs of processing applications are recovered in full. The Government set these maximum fee levels following engagement with local government officers

on processing costs. Even the £500 cost is less expensive than a conventional licence issued under the Highways Act 1980.

Application Process

- 1.4 The consultation period will be 14 calendar days. Determination must occur after the consultation period has ended and within 28 days of the application date. Those seeking to renew their consent will not need to provide an application drawing.

Licence Duration

- 1.5 Under the new provisions, a pavement licence can be granted for a maximum period of two years. There is no minimum licence duration. The Council has discretion to set a standard pavement licence length (up to two years) and can grant pavement licences of differing durations depending on the circumstances. As each pavement licence application will attract an application fee, the frequency of such applications will greatly influence workload and application fee income.

Enforcement

- 1.6 The 2023 Act gives local authorities new enforcement powers including the ability to remove licensed pavement furniture from the highway, following a notification process. A Council policy around the application of these powers will be developed by officers in due course.

Other provisions

- 1.7 The Council may not grant a person any other licence to do anything which is capable of being authorised by a pavement licence. This means it will no longer be possible to apply for a licence to place tables and chairs on the highway under the Highways Act 1980.

2 RECOMMENDATION

- 2.1 The relevant section of the 2023 Act is yet to be implemented. Regulations to that effect are expected before autumn. Once an implementation date has been set by Government, a new fee schedule which would specify fee levels and licence durations in the borough would be set by the Licensing Authority. Given that the implementation date is unlikely to coincide conveniently with a scheduled meeting of the Licensing Committee, officers recommend that pending approval of the Licensing Committee any pavement licensing fees can be set by the Director of Transport and Regulatory Services in consultation with the Chair of the Licensing Committee.

3 LEGAL IMPLICATIONS

- 3.1. Pavement licences were introduced under the Business and Planning Act 2020 to provide a streamlined and cheaper route for premises providing food

and drink to place furniture on the public highway.

- 3.2 Any business which uses, or proposes to use, a premises for the sale of food or drink for the consumption, on or off the premises can apply for a pavement licence. Businesses which are eligible include cafes, restaurants, public houses, bars, coffee shops, supermarkets and entertainment venues etc can apply for a pavement licence.
- 3.3 A pavement licence permits the business to place authorised furniture on the public highway provided it is being used to sell or serve food or drink or to consume food or drink on the premises.

4 EQUALITIES IMPACT

- 4.1 The recommendations in this report have no equalities implications.

ANDREW BURTON

DIRECTOR OF TRANSPORT AND REGULATORY SERVICES

Background papers: None

Contact officer: James McCool, Transport Planning Manager,
james.mccool@rbkc.gov.uk (07739 317238)

PRESENT

Committee Members

Cllr Janet Evans (Chair)
Cllr Toby Benton (Vice-Chair)
Cllr Gregory Hammond (Vice-Chair)
Cllr Marie-Therese Rossi (Vice-Chair)
Cllr Aarien Areti
Cllr Laura Burns
Cllr Abdullahi Nur
Cllr Dori Schmetterling
Cllr Claire Simmons
Cllr Linda Wade

Council Officers

Fiona Johnson – Licensing Team Manager
Sharon Dyball – Principal Licence Business and Finance Officer
James McCool – Transport Planning Manager
Heidi Titcombe – Principal Solicitor
Lindsey Le Masurier – Senior Solicitor
Holly Weaver – Senior Governance Coordinator
Emily Beard – Governance Officer

1 APOLOGIES FOR ABSENCE

The Chair opened the meeting by informing all present that the former Licensing Team Manager of RBKC - Patrick Crowley – had since the last meeting passed away and shared her condolences with the Committee.

Apologies were received from the following: Cllrs David Lindsay and Stuart Graham.

2 DECLARATIONS OF INTEREST

No declarations of interest were made.

3 MINUTES OF MEETING HELD ON 7 MARCH 2023

The minutes of the meeting held on 7 March 2023 were received and subject to the inclusion of Lindsey Le Masurier on the list of attendees, was signed as a correct record of the meeting.

4 PERMANENT PAVEMENT LICENSING PROVISIONS [FOR DECISION]

James McCool introduced the report. He explained that the new Levelling Up and Regeneration Act 2023 (the Act) would make the pavement licensing provisions permanent, and would address certain issues with the temporary regime such as the short timetable for determining the application (taking the overall consultation and determination time from 2 weeks to 4 weeks) and the low fees. The legislation also brought in powers for the enforcement and removal of pavement furniture, and was likely to be enacted by the autumn as the current temporary provisions ran out on 30 September 2024. The fees and charges for pavement licences proposed enacted and confirmed the most appropriate fee payable. The proposal was being brought to the Committee at this stage, as the Committee met annually, and so the intention was to grant the Director delegated powers to set the fees when the Act was implemented, and they could be reviewed and approved by the Committee at the next Licensing Committee meeting in 2025.

In response to questions regarding the provisions, Mr McCool explained that:

- The legacy Tables and Chairs permissions would continue until the licence ran its course, but no more could be issued under the Highways Act if they could be granted under the Business and Planning Act 2020 (as amended by the Act) instead.
- The Permanent Pavement Licences could be granted for up to two years but typically subject to the merits of the application, 12 months in duration would be given, although some sites such as Harrods had longer ones.
- There had been a £100 fee for the licence under the Business and Planning Act since 2020.
- The legislation would set the maximum price for the fee, but it was at the discretion of the Council to set the fee for below the maximum amount and then possibly increase it if it felt appropriate up to the maximum price allowed.
- By granting one year term licences, these would be reviewed and if needed renewed after 12 months for a further period of two years. Subsequent renewals could be for a period up to two years.
- The Act changed the length of time for determination of applications from 2 weeks to 4 weeks, which ultimately benefited residents and the Council as there was more time to consult on the proposal and to determine applications.
- If businesses previously had a pavement licence then they could rely on the plan they submitted previously. The Council could put that on the website rather than requiring the submission of a fresh plan and adding another step to the process.
- The provisions in the Act would be permanent until new legislation came in to replace it. The temporary provisions introduced in 2020 were a response to the pandemic.
- The Council's British Summertime Licensing Policy is not significantly affected by the Act. The Council will continue to issue pavement licences for summertime terraces during British Summer Time. Temporary footway extensions would be applied to gain space for the licensable area, and depending on the size of the area it could work out to be approximately £1100 paid to the Council with all of the fees included.
- The Act sets maximum fees.
- The Act streamlines the application process for businesses and is more efficient for local authorities.

The Committee RESOLVED that any pavement licensing fees would be set by the Director of Transport and Regulatory Services in consultation with the Chair of the Licensing Committee following the implementation date of the Levelling Up and Regeneration Act 2023 in relation to the fees applicable.

Action: Director of Transport and Regulatory Services

5 REVIEW OF LICENSING FEES [FOR DECISION]

Sharon Dyball introduced the report. She explained that the application fees were split into two costs, one relating to the direct processing costs from the initial application (Part A) and one relating to the ongoing costs generated by complaints, research, monitoring premises, reviewing forms, among other things (Part B). Ongoing licences such as gambling licences generated an annual cost. Ms Dyball went on to explain the fees for each type of licence that were included in the report.

Ms Dyball explained that there had been an increase in the fees for applications for gambling licences which was on a cost recovery basis. There was typically only one gambling licence application process every 2-3 years. She explained that the special treatment fees were modest due to the hourly rates for officers. There was a requirement under the Act that a licence involving animals needed an inspection from someone qualified, and so few applications were submitted to the Council, that no one in the team was hired and qualified to undertake the vetting job. There were no pet shops, breeders or stables in the borough to require a licence. In response to a question regarding the number of licenced animals in the borough, Ms Dyball explained that there was only one which was a serval cat, but previously there had been enquiries about a large snake.

Officers explained that the fee setting for Scrap Metal Dealers was largely a paper exercise, as there were only a couple of collectors in the borough and the fee was only required every few years, but the charge was included and based on what would be assumed to happen should an application be submitted.

In response to questions regarding sex establishment licences, officers explained that they routinely checked premises in the borough that sold sex toys and clothes, as below a certain amount they would not need a licence, but to go over that amount they would need to apply for a licence with the Council. There was legislation to control what quantity of sexual products could be shown in a shop window before a shop would be classed as a sex shop and would require a licence. There had been enquiries in the borough for licences for Sexual Entertainment Venue licences, but thus far none had been issued.

Ms Dyball commented that the pre-application advice fees shown in table 4 had increased in line with the uplift of the hourly officer rate given by Finance, but she added that it had increased more substantially in previous years.

Ms Dyball explained that in consultation with Mr McCool the Tables and Chairs licence fees were increased by the recommended 4%, and also explained that a Pavement Licence would be cheaper and quicker to process. Mr McCool added that revenue

was expected to fall once the new Levelling Up and Regeneration Act was implemented.

The Committee explained they would like a working group to be set up for the Autumn to be able to review the proposed licensing fees in advance of the budget being agreed at Full Council the following Spring. In response officers explained that the fees and charges for 2024/25 had been thoroughly costed based on the information available to them, and whilst the Committee had the option to increase the fee beyond the officer's recommendation, if challenged the Council would need to be able to justify the increase. They agreed that a working group in the Autumn would be beneficial for the Committee to have the opportunity to examine the proposed fees and charges for the following year, and the officers would be able to share how the fees were decided upon with calculations.

The Committee agreed that a working group to review the proposed fees and charges for 2025/26 would be set up for November 2024.

Action: Senior Governance Coordinator

The Committee sought clarity on why the Boarding of Cats or Dogs had the highest uplift in fee, and in response officers explained that most animal licences were for two years, although could be between one and three years, and there were inspections that needed to be carried out at specific times during the licensable period. These inspections were highly detailed and lengthy, and were the bulk of the charge, so if the fees were lowered then the cost to the Council could not be recuperated.

Ms Dyball informed the Committee that the fee for Summer time terraces needed to be set before 1 March 2024, and that the director of the service made the decision in consultation with the Chair of the Licensing Committee. She concluded by stating that the fees in the report only represented the fees the Council was responsible for setting, and the overall total revenue generated by the service was less than £300,000. The bulk of this came from Licensing Act fees as the borough had over 1000 premises within its boundaries, and those fees were set by Central Government and had not increased since 2005.

The Committee RESOLVED that the proposed fees set out in Tables 1-5 for the period commencing 1 April 2024 be approved.

Action: Director of Transport and Regulatory Services

6 PERFORMANCE MONITORING REPORT [FOR INFORMATION]

Sharon Dyball and Fiona Johnson introduced the report. Ms Dyball began by running through the figures provided in the report regarding the Licensing team's work over the previous 12 months and explained that over the last 5 years it had been increasingly difficult to meet the target of 90% success rate in granting unopposed applications within 10 days of the end of the consultation period. She explained that applications were prioritised where an applicant would become disadvantaged by the application being determined, i.e. grants and variations, but a lower target of 85% would be more appropriate for the team to try to reach. It was suggested by the Committee that the Lead Member or the director of the service be informed of the struggles being faced by the Licensing team as a direct impact of deleting a post with increased service

need. The deleted post had led to lower resilience in the team, and for two weeks in February 2024 due to annual leave and staff sickness, the team was operating with only two members of staff. Ms Johnson added that in May 2024 the team had acquired the licensing of tables and chairs, so the workload had increased in more ways than just increased applications.

Ms Johnson explained there had been a high volume of complaints over the previous 12 months and of 208 inspections carried out, 27 premises in the borough were found to be operating in breach of one or more conditions. The team actively tried to avoid cases needing to be taken to court by cooperating with premises, and so far, there had been two cautions and no prosecutions.

The Committee asked whether Chelsea pub watch was still in operation and whether there should be one for Chelsea FC home games, and in response officers explained that there had been one in operation for many years, but the Licensing team did not have the resources for it at the present time. A premises took over and undertook their own pub watch, but had closed due to the Covid pandemic. There was an officer in the team who was dedicated to working on Chelsea FC's home games, and the police would visit licenced premises where necessary. Most premises had voluntarily added conditions regarding home match days to have additional security in order to maintain and promote the licensing objectives. The Committee expressed concern that the police had been ignoring behaviours such as excessive congregation and public urination, and Ms Johnson stated she would be happy to take away any concerns regarding negative and disruptive match day behaviour to investigate.

The Committee recommended that the relevant Lead Members and Directors be informed about the issues with resources and staffing in the Licensing team, so as to try and find a solution and help the service meet their targets.

The Committee noted the report.

7 APPEALS UPDATE [FOR INFORMATION]

Heidi Titcombe introduced the report.

It was noted that there had only been two appeals since the previous Licensing Committee meeting which related to reviews. The first appeal was for the review of Jako on Kensington High Street by the police after stabbings occurred outside the premises in January 2022. The Sub-Committee decided to revoke the licence, and the Premises Licence Holder lodged an appeal against the decision, but ultimately withdrew it, and ended up paying the Council £2,000 towards its legal costs. The second appeal was for the review of the Pelican on All Saints Road, and was brought about by nine residents who applied for a review, but as the case was ongoing and was due to be heard by the Magistrates Court in July 2024, further information could not yet be shared with the Committee.

The Committee thanked officers for their work which limited the number of appeals received, and in response Ms Titcombe thanked the Committee for their work in making sound and reasoned decisions.

8 ANY OTHER ORAL OR WRITTEN ITEMS WHICH THE CHAIR CONSIDERS URGENT

The Committee were informed that the next meeting of the Notting Hill Gate Licenced Premises Forum would now be commencing at 5.30pm.

The meeting ended at 11.34 am

Chair