

THE ROYAL BOROUGH OF KENSINGTON AND CHELSEA

LICENSING COMMITTEE - 13 FEBRUARY 2025

REPORT BY THE DIRECTOR OF HIGHWAYS AND REGULATORY SERVICES

**PAVEMENT LICENSING, BRITISH SUMMERTIME LICENSING, AND LICENSING AMENITIES ON THE HIGHWAY
FEES AND CHARGES 2025/26**

The Committee is recommended to approve the proposed increases in the fees charged by the Council, detailed in this report, for processing licence applications and (where relevant) the monitoring of amenities on the highway.

FOR DECISION

1 INTRODUCTION

- 1.1 For the financial year 2025/26, the Lead Member for Finance, Customer Services and Net Zero recommended that an increase of 2 per cent for inflation be applied to maintain the level of charging income for the Council in real terms. In reviewing the charges, officers have considered the level of demand for the service, the market position and how the charging policy helps to meet other service objectives. This is in line with the Council's Charging Policy.
- 1.2 This report covers chargeable functions that are exercised by Highways and Regulatory Services, which stem from the Council side of the Constitution. The proposed new charges have been rounded up to the nearest pound to ensure that the minimum recommended increase of 2 per cent has been achieved, and the actual percentage change is shown for information.
- 1.3 Under the various relevant statutory provisions local authorities are entitled to charge fees for licences. Apart from certain licences where the fees charged are fixed by law, the local authority can charge a reasonable fee which, when totalled, should not exceed the cost of running the service. The strategic objective of the Council is to recoup its costs incurred in administering the individual licensing functions where the relevant legislation allows. Following this year's review, we recommend all non-statutory fees are increased by the recommended 2 per cent.
- 1.4 In 2016 the decision of the Supreme Court and the European Court of Justice in the Hemmings case 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. So the first part of the fee (Part A) covering the direct costs for processing an application is charged when the application is made and if the application is successful, a second fee can be charged for running the licensing

regime, including monitoring and enforcement of licensed and unlicensed premises. The second part (Part B) of the fee would only be payable if a licence is granted.

2 PAVEMENT LICENSING FEES

2.1 The Government introduced pavement licences under the Business and Planning Act 2020 (the 2020 Act) as a temporary measure to permit hospitality businesses to operate on-street with minimal bureaucracy. Pavement licensing proved popular and was made permanent under the Levelling up and Regeneration Act 2023 (the 2023 Act).

2.2 The 2023 Act modified the 2020 Act in respect of;

- fees,
- application processes,
- licence duration and,
- enforcement.

These modifications took effect (without prior notification) on 31 March 2024. This date was not known when the Licensing Committee resolved on 12 March 2024 that any pavement licensing fees would be set by the Director of Highways and Regulatory Services (the Director) in consultation with the Chair of the Licensing Committee following the implementation of the 2023 Act.

2.3 On 31 July 2024, the Director set the fee for new pavement licence applications at £500. The fee for an existing licensee seeking to renew their consent was set at £350. These are the maximum fee levels permitted under the 2023 Act. The Director also set the standard duration for a pavement licence in the borough at one year. A copy of the Director's delegated decision report is attached as Appendix A.

2.4 The proposal for 2025/26 is to continue with the fee schedule introduced on 31 July 2024, as set out in Table 1 below.

Table 1 – Pavement Licensing Fees

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

2.5 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.

3 BRITISH SUMMERTIME LICENSING

- 3.1 The Council has been licensing temporary terraces on 'footway extensions' on suspended car parking bays and yellow line using pavement licences since 2020. The principle of introducing a charging regime to cover the Council's costs in organising and regulating the provision of temporary footway extensions, to enable summertime terraces to be licensed, was agreed in February 2022 by Key Decision KD05967. Associated procedural arrangements, fees and standards were set by Executive Decision ED06397 in February 2023.
- 3.2 The fees for temporary footway extensions comprise a fixed implementation fee payable upfront to enable the Council to process and organise the creation of the temporary footway extension and a monitoring fee, based on a footway extension's unit length, to cover the Council's monitoring costs over a British Summer Time season.
- 3.3 The monitoring fee is charged after an application to create the footway extension has been successful and implemented. The monitoring fee is levied in three tranches on 1 May, 1 July and 1 September. Accordingly, footway extensions that are only implemented for part of the Summer may not be liable for the full monitoring fee.
- 3.4 The Council is entitled to charge a fee in relation to the creation of temporary footway extensions under The Local Authorities' (Transport Charges) Regulations 1998 ('the 1998 Regs'). In setting this fee, the Council must have regard to the costs that it incurs in carrying out this activity. This includes monitoring of the temporary footway extension but does not include monitoring or enforcement activity associated with the associated pavement licence.
- 3.5 Last year, the fees for organising and regulating the provision of temporary footway extensions were set by a standing order that is attached as Appendix B.
- 3.6 The proposal for 2025/26 is to increase the implementation fee and the monitoring fee by 2%, rounded, as set out in Table 2, below.
- 3.7 Two premises failed to pay the monitoring fee last year. In the interest of fairness and in recouping Council costs, late payment charges are proposed, in line with Government legislation on late payments, as set out in Table 2.

Table 2 – Temporary Footway Extension Fees

	2024 CHARGE	INCREASE (%) AFTER ROUNDING	PROPOSED 2025 CHARGE
Implementation Fee	£557	2.15%	£569
Monitoring Fee (per metre length of temporary footway extension for the full British Summer Time season)	£121	2.48%	£124
Late payment charge if monitoring fee invoice is not paid within 30 days of receipt	n/a	n/a	£40
Additional reminder charge for each additional reminder to pay the outstanding debt	n/a	n/a	£40

4 LICENSING AMENITIES ON THE HIGHWAY

- 4.1 Under the permanent pavement licensing regime, introduced last year (see above), 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 is no longer possible for a hospitality business to apply for a licence to place tables and chairs on the highway under the Highways Act 1980.
- 4.2 Every year, a small number of businesses that are not in the hospitality sector, including hair salons and estate agents, apply to the Council for licences to place tables and chairs on the highway. These businesses are not eligible to apply for a pavement licence and must apply under the Highways Act 1980. The proposed fees, presented in Table 3, below, are based on previous years' fees, adjusted for inflation.
- 4.3 The Council does not license A-boards.

Table 3 – Placing of Amenities on the Public Highway

	2024/25 CHARGE	INCREASE (%) AFTER ROUNDING	PROPOSED 2025/26 CHARGE
Application Fee (Part A)	£587	2.04%	£599
Fee per chair (Part B)	£24	4.17%	£25
Additional Fee beyond 9pm (Part B)	£287	2.09%	£293
Duplicate Licence (Part A)	£59	3.39%	£61
Transfer (Part A)	£175	2.29%	£179

5 LEGAL IMPLICATIONS

5.1 The legal implications are contained within the body of this report.

6 EQUALITIES IMPLICATIONS

6.1 The Council, when taking decisions in relation to any of its functions, must comply with its public sector equality duty as set out in s149 of the Equality Act 2010 (the Act). The contents of this report will have no adverse or negative effect/impact on any of the protected characteristics.

FOR DECISION

ANDREW BURTON

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Background papers: None

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Appendices

Appendix A – Delegated decision on pavement licensing fees and duration dated 31 July 2024

Appendix B – Standing Order on temporary footway extension fee dated 29 February 2024