



North Devon Council

Report Date: 2 September 2024

Topic: Pavement Licensing Legislative Amendments and Variation to Fees

Report by: Lead Officer Commercial Regulation

1. INTRODUCTION

- 1.1. The [Levelling Up and Regeneration Act 2023](#) has created a series of amendments to the [Business and Planning Act 2020](#) which are of significance to the Council's pavement licensing regime. The legislative amends are in respect of pavement licence duration; a new renewal process; consultation periods; enforcement powers; and fees.
- 1.2. Consideration of the legislative amends is required, and there is a proposal to vary fees for the grant of Pavement Licence and introduce a new fee for the renewal of such a licence.

2. RECOMMENDATIONS

It is RECOMMENDED that Strategy and Resources Committee:

- 2.1. Consider the changes made to the Business and Planning Act 2020 by way of the Levelling Up and Regeneration Act 2023.
- 2.2. Instruct officers to update current pavement licence procedures to meet legislation set out in the Levelling Up Act 2023 and to issue licences for the maximum two year period (it is noted that web amends have already been undertaken to reflect the amended provisions).
- 2.3. Recommend to Full Council the approval of the following new/amended pavement licence application fees:
 - 2.3.1 £500 for the grant of a pavement licence (with a refund of £207 if a licence is not granted).
 - 2.3.2 £350 for the renewal of a pavement licence (with a refund of £207 if a licence is not renewed).
 - 2.3.3 Enforcement fees for removing and storing furniture: reasonable charges will be made in line with cost recovery, and invoiced directly based upon furniture size, weight, and quantity.

3. REASONS FOR RECOMMENDATIONS

- 3.1. To keep abreast of legislative changes.
- 3.2. Changes to the Council's procedures are required, namely to bring into effect a new renewal process; extend the consultation time for licences; and to

amend the standard conditions to be reflective of the fact there is no need to reference the impact on a Public Space Protection Order re the consumption of alcohol (webpage amends have already been made).

- 3.3. The introduction of a new renewal fee and amendment of the Council's fee for the grant of a Pavement Licence will better enable the Council to recover its costs associated with the administration and regulation of the pavement licensing regime. Additionally for circumstances where the new enforcement provisions under the amended legislation are to be utilised, there is a need for clarity to those involved over the charges that will be made for the removal or storage of any furniture.

4. REPORT

- 4.1 The Council is responsible for the administration and regulation of Pavement licences under the Business and Planning Act 2020. Pavement Licences are issued for movable furniture on part of a relevant highway for a licence-holder to sell or serve food or drink and allow customers to consume such food/drink in connection with the relevant use of a premises.
- 4.2 Businesses that are eligible include: public houses, cafes, bars, restaurants, snack bars, coffee shops, and ice cream parlours including where such uses form an ancillary aspect of another use, for example supermarkets, or entertainment venues which sell food and drink.
- 4.3 Licences can only be granted in respect of highways listed under [section 115A\(1\) Highways Act 1980](#). Generally, these are footpaths restricted to pedestrians or are roads and places to which vehicle access is restricted or prohibited.
- 4.4 The provisions in part 1 of the Business and Planning Act 2020 (BPA 20) were initiated in response to Covid-19 and designed to allow businesses to gain licences quickly. These provisions were only originally intended to remain in place for a temporary period. Section 10 of the Act originally stated that the provisions would expire at the end of 30 September 2021. The Levelling Up and Regeneration Act 2023 made permanent the provisions set out in the BPA 2020, these changes came into effect as of 31 March 2024.
- 4.5 The Department for Levelling Up, Housing and Communities issued [guidance](#) pertaining to the amended pavement licensing regime on 2 April 2024.
- 4.6 The main amendments made to the pavement licensing provisions include the following:
- 4.7.1 [Section 115E \(5\)](#) of the Highways Act 1980 no longer facilitates a licence being granted under that Act for anything which is capable of being authorised by a Pavement Licence under section 1 of the Business and Planning Act 2020. As such, Devon County Council has now stopped issuing pavement licences.

- 4.7.2 There is now the provision of both a grant and renewal process (previously no renewal process existed under the BPA 2020). For the purposes of the amended provisions an application is a renewal application if it is made by a person who already holds a Pavement Licence; it is in respect of the premises to which the existing licence relates, and it is for a licence to begin on the expiry of the existing licence and on the same terms.

There is no definition of 'terms' in the legislation, but the area of the Pavement Licence, the nature of furniture and its position will likely be of relevance with this regard.

- 4.7.3 Amending the maximum fee councils may charge applicants from £100 to £350 for premises which already hold a pavement licence, and £500 for new applications.
- 4.7.4 Extending both the public consultation period and the Council's determination period from 7 days to 14 days for applications received.

This will give officers more time to inspect proposed areas and ensure that the no-obstruction condition is met, this condition ensures that the licence must not have the effects set out in section 3(6) of the 2020 Act. Section 3.2 of [Inclusive Mobility](#) A Department for Transport Guide to Best Practice on Access to Pedestrian and Transport Infrastructure sets out a range of recommended and minimum widths to allow safe passage on pavements.

- 4.7.5 Extending the maximum duration of Pavement Licences from one year to two years (for those granted under the new amended legislation).

It is proposed to issue licences for this longer period.

- 4.7.5 Amending legislation relating to the consumption of alcohol. This will now allow alcohol to be consumed in a pavement licenced area (granted under the new provisions) where restrictions in respect of public drinking are in place by way of a Public Space Protection Order.
- 4.7.6 Inserting a new enforcement schedule providing powers to North Devon Council to remove furniture if a premises is not abiding by its Pavement Licence conditions or hours.

If a person puts removable furniture on a relevant highway for which a licence would be required and there is a lack of compliance with the legislative provisions, the Council may now serve a notice to require the person to remove the furniture before a set date, and refrain from putting furniture on the highway unless authorised. If the person then leaves or puts removable furniture on the relevant highway in contravention of the notice, North Devon Council may (Section 7A(4b)):

- 4.7.6.1 Remove the furniture and store it.

- 4.7.6.2 Require the person to pay the authority's reasonable costs in removing and storing the furniture, and refuse to return the furniture until those reasonable costs are paid.
- 4.7.6.3 If within the period of three months beginning with the day on which the notice is given the person does not pay the reasonable costs, or does not recover the furniture, North Devon Council may dispose of the furniture by sale or in any other way it thinks fit, and retain any proceeds of sale to help recover storage costs.
- 4.8 There are currently 12 Pavement Licences issued by North Devon Council. Those granted prior to 30 March 2024 (11) will remain valid until their expiration date of 30 September 2024 (the remaining one expires April 2026). Businesses will now be able to renew their licences under the amended provisions. Records indicate that 8 licences were issued by Devon County Council under the former Section 115(E) Highways Act 1980 provisions, albeit it cannot be predicted with any level of accuracy the number of these businesses which will make application. When undertaking fee calculations an estimated licensed community of 20 has been used.
- 4.9 The application fee is currently charged at £100 per application (the maximum). The new changes will increase the maximum capped fees to £500 per grant and £350 per renewal. As such, the Council must determine and approve new fees in order for it to achieve better cost recovery.
- 4.10 To ensure that the Council is reimbursed for the administration and regulation of this service a cost analysis has been undertaken. A breakdown of the predicted costs in granting and renewing Pavement Licences and their associated regulation is contained in **Appendix A**. It is suggested that the fees for the renewal of a licence, the grant of a licence and any enforcement action is set in line with those fees outlined at Paragraph 2.3.
- 4.11 When setting the fees, local authorities should have regard to the 'Levelling Up and Regeneration Act 2023', '[Open for Business: LGA Guidance on Locally Set Licence Fees](#)'; the '[BEIS Guidance for Business on the Provision of Service Regulations](#)'; and principles in the [Regulators' Code](#) which sets out the steps that must be taken to set fair and reasonable fees. These documents have been considered when formulating those fees recommended for approval.
- 4.12 The above LGA Guidance on Locally Set Licence fees detail the type of costs that may be included in the calculation of a fee. The examples include administration, initial visits, third party costs, liaison with interested parties, local democracy costs, management costs, on-costs, development, determination and production of policies, web material, advice and guidance, setting and reviewing fees including committee costs.
- 4.13 The main cost associated with the fees calculated, is in respect of officer time. Officer time includes direct and indirect costs. Direct costs include salaries,

employer's pension contributions, employer's National Insurance, etc. Indirect costs include the reasonable overheads incurred from providing associated administrative services. It is believed that using staff rates with on-costs is the fairest way to recoup these costs. The Financial Services team have advised on hourly rates of staff and these have been used in preparing the calculations.

4.14 The LGA guidance on fee setting cited above details the outcome of case law (Hemming v Westminster), whereby the issue of how charges are levied by Councils was considered. The case examined the following two structures:

4.14.1 Whereby a council charged a fee upon application (covering the costs of authorisation procedures) and a subsequent fee to successful applicants (covering the cost of administering and enforcing the framework) - the 'type A' approach.

4.14.2 Where a council charged a single fee on application covering all costs, on the basis that the relevant proportion of the fee would be refunded to unsuccessful applicants – the 'type B' approach.

4.15 The European Court of Justice found the type A approach of charging two fees is permissible under the European Services Directive and the Provision of Service Regulations, but felt that the type B approach of charging a single fee was not compatible with the Services Directive or the Regulations. As such the recommendation at paragraph 2.3 is for a two part fee with Part A being payable on application, and Part B being payable on grant of a licence is proposed.

4.16 The [List of Fees and Charges Environmental Health and Housing Services \(2024/2025\)](#) documents are available on the North Devon Council website, which will need to be edited following approval of new fees.

4.17 Public consultation on the proposed fees is not proposed to be undertaken, given they are set within capped maximum limits by statute.

5. RESOURCE IMPLICATIONS

5.1 North Devon Council currently has no/limited means for storage of furniture or its transport. As such any enforcement fees charged will likely need to be in accordance with those costs invoiced to the Council by way of the hire of a storage facility and vehicle for collecting and moving the furniture. Each set of enforcement circumstances will need to be charged based upon their circumstances and will be dependent upon the size and type of furniture and its quantity.

5.2 To give some idea as to the costs involved, van hire from local companies typically starts at £80 per day for a short wheel base van and up to £100 for larger vans. Storage starts at a price of £36.10 per month for internal self-storage and £78.02 per month for external storage containers. Insurance requirements would have to be met.

- 5.3 In light of the legislation facilitating the Council being able to require a person to pay the authority's 'reasonable costs' in removing and storing the furniture, and refusing to return furniture until those reasonable costs are paid for, it is not proposed to set any fixed enforcement fee other than to cite that reasonable charges (based upon furniture size, weight, and quantity) will be made in line with cost recovery for removing and storing furniture.
- 5.4 The staff resources required to amend the website, implement new and varied fees, train officers, administer applications and regulate will be met/partially met by way of the fees to be charged as outlined in paragraph 2.3.
- 5.5 If fees are amended in line with paragraph 2.3 additional income to offset costs will be gained, but in light of the difficulty in predicting when applications will be made and at what fee it is not possible to estimate the income expected per annum.
- 5.6 Members may wish to implement a lower fee than that proposed, but this would ultimately impact the tax payer as a result of not recovering the actual costs of providing the service.

6. EQUALITIES ASSESSMENT

- 6.1 The impact of the proposals is perceived to be neutral. An Equality Impact Assessment has been undertaken.

7. ENVIRONMENTAL ASSESSMENT

- 7.1 An environmental assessment has been undertaken and revealed a neutral impact.

8. CORPORATE PRIORITIES

- 8.1 What impact, positive or negative, does the subject of this report have on:
- 8.1.1 The commercialisation agenda: neutral.
 - 8.1.2 Improving customer focus: neutral.
 - 8.1.3 Regeneration or economic development: neutral.

9. CONSTITUTIONAL CONTEXT

- 9.1 Article of Part 3 Annexe 1 paragraph: 4b
9.2 Referred or delegated power?: Delegated

10. STATEMENT OF CONFIDENTIALITY

- 10.1 This report contains no confidential information or exempt information under the provisions of Schedule 12A of 1972 Act.

11. BACKGROUND PAPERS

11.1 The following background papers were used in the preparation of this report:
(The background papers are available for inspection and kept by the author of the report).

- Business and Planning Act 2020.
- Levelling-up and Regeneration Act 2023.
- LGA, Guidance on Locally Set Licence Fees, 14 December 2023.
- BEIS Guidance for Business on the Provision of Services Regulations. October 2009.
- Department for Transport. Inclusive Mobility: Guide to Best Practice on Access to Pedestrian and Transport Infrastructure Dec 2021.
- Pavement Licences: Guidance to accompany pavement licensing introduced in the Business and Planning Act 2020. 2 April 2024.

12. STATEMENT OF INTERNAL ADVICE

12.1 The author (below) confirms that advice has been taken from all appropriate Councillors and Officers:

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30.07.24