



**OPEN  
LICENSING AND APPEALS COMMITTEE**

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**Licensing and Appeals Committee –18<sup>th</sup> June 2024**

**PERMANENT PAVEMENT LICENSING REGIME 2024**

**Report of Director of Place and Economy**

**Report Author and Contact Details**

Grace Dowson, Licensing Manager  
01629 761344 or [grace.dowson@derbyshiredales.gov.uk](mailto:grace.dowson@derbyshiredales.gov.uk)

**Wards Affected**

District Wide

**Report Summary**

The Business and Planning Act 2020, in response to Covid, was temporary legislation introduced to assist businesses by creating a temporary pavement licensing regime, due to expire at the end of September 2024. The government has made the scheme permanent, with several amendments, through the Levelling Up & Regeneration Act which received royal assent last year and came into force on Sunday 31 March 2024

The Levelling Up & Regeneration Act 2023 became law last year, the provisions to make the pavement licence scheme permanent were not immediately commenced. It was anticipated that it would happen later in this year.

A decision is required on what fee should be set (currently the fee of £100.00 is based upon the maximum permitted fee allowed under the temporary regime).

**Recommendations**

1. For Members to discuss the options as to the fees to be set for the permanent Pavement Licensing regime (and sitting out licences). The Levelling Up and Regeneration Act introduces a maximum standard fee cap of £500 new applications and £350 renewal applications. Fees are to be set locally and it is for the licensing authority to determine the appropriate fee.
2. It is further recommended that as licences granted under the temporary pavement regime granted by Derbyshire Dales District Council, automatically lapse and are not renewable at their expiration, any premises holding such a licence shall be treated as a renewal under the new regime (as long as such an application is made before the expiration of the existing licence) and the scope of the application is exactly the same as the application under the granted licence, i.e. same premises, same licence holder and same terms of licence.
3. To set the fee for a pavement licence or a sitting out licence at £500 for a new application and £350 for a renewal application.

## List of Appendices

### Appendix A – Application Form

### Appendix B – Conditions

### Appendix C – EIA

### Background Papers

[Business and Planning Act 2020 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

[Pavement licences: guidance - GOV.UK \(www.gov.uk\)](https://www.gov.uk)

### Consideration of report by Council or another committee

No

### Council Approval Required

No

### Exempt from Press or Public

No

## PERMANENT PAVEMENT LICENSING REGIME 2024

### 1 Background

A pavement licence is granted by the local authority, or deemed to have been granted, which allows the licence-holder to place removable furniture over certain highways adjacent to the premises in relation to which the application was made, for certain purposes. The Levelling Up and Regeneration Act 2023 makes permanent the provisions set out in the Business and Planning Act (BPA) 2020 that streamlined the process to allow businesses to secure these licences quickly. Prior to the temporary regime being introduced, Derbyshire County Council issued the Street Café Licences under Part 7A of the Highways Act 1980.

Existing Licences under the temporary legislation will expire on the 30<sup>th</sup> September 2024. The government has made the scheme permanent, with amendments, through the Levelling Up & Regeneration Act, which came into force with effect from 31<sup>st</sup> March 2024.

The original 'streamline' temporary Pavement Licensing legislation required applications to be determined within a 14-day window (7 days consultation and 7 days determination) from receipt of the valid application and the licence issued for a minimum of 3 months from the start date or to expire at the end of September each year. There was no renewal mechanism. The application cost for such a licence was capped at a maximum of £100.

If a licence was not determined within the given timescales the licence was deemed granted.

## **Which business is eligible.**

A licence permits the business to use furniture placed on the highway to sell or serve food or drink and/or allow it to be used by people for consumption of food or drink supplied from, or in connection with the use of the premises. 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.

Businesses that do not use their premises for the sale of food or drink, for example hair or beauty salons, are ineligible. Though they can apply for permission to place furniture on the pavement under the Highways Act 1980.

## **Furniture permitted under licence.**

The furniture which may be placed on the pavement includes:

- Counters or stalls for selling or serving food or drink,
- Tables, counter or shelves on which food or drink can be placed,
- Chairs, benches, or other forms of seating, and
- Umbrellas, barriers, heaters, and other articles used in connection with the outdoor consumption of food or drink.

The furniture is required to be removable and related to the serving, sale and consumption of food and drink. In principle this means it is not a permanent fixed structure, able to be moved easily and stored away at night.

## **What furniture is NOT permitted by a licence.**

Furniture that is not removable and used in connection with the outdoor selling or consumption of food or drink, are not permitted by a pavement licence.

Advertising boards (A Boards) are not included in the definition of furniture within the pavement licensing regime. They need consent under the Highways Act 1980 and require express advertising consent under the Town and Country Planning regulations 2007.

## **2. Key Issues**

The Levelling Up & Regeneration Act became law last year, the provisions to make the pavement licence scheme permanent were not immediately commenced. It was anticipated that it would happen later in the year, but it unexpectedly commenced on 31 March.

When determining the pavement licence applications, the Council must have regard to the Guidance issued by the Secretary of State. Paragraph 2.1 of the Guidance states that to help support local businesses and give them more certainty, the expectation is that local authorities are pragmatic and will grant licences for the maximum period of 2 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.

Processing a pavement licence application takes on average 8 hours for a renewal application and 12 hours for a new application. For renewal applications, this time includes the time to validate the application, ensuring that all the relevant paperwork has been provided with the application and the correct fee has been paid. Time is also spent undertaking the consultation process and once the consultation period has ended, assessing any comments and/or objections made by Environmental Health,

Highways Planning and other persons who have made any representations, determining the application, granting, or refusing the application.

For new applications, or where there is a significant change from a previous licence, this will be like the above but will also include additional time to ensure the suitability of the proposed location, the number of tables and chairs proposed etc, and assessing the merits of the application.

Both new and renewal licences will require monitoring and may require enforcement. The Licence fee is intended to cover both costs. It should be noted that more complex the licensing regime the more likely enforcement measures are required.

The Temporary Pavement Licence fee was capped at £100.00, and this fee was introduced by Derbyshire Dales on the 1<sup>st</sup> April 2023. Under the Permanent Pavement Licensing Regime laid out in the Levelling up and Regeneration Act 2023, which came into effect on 31<sup>st</sup> March 2024 the fee is capped at £500.00 for first time (Grant) applications and £350.00 for renewal applications. The increase and fee cap intends to balance both the 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 temporary pavement licence regime, the enforcement powers lay with the County Council under the Highways Act 1980. Under the Permanent Licensing Regime, the local authority will be able to issue a notice requiring the breach of any licence to be remedied. If the licence holder fails to remedy the breach, the local authority may amend the licence, with the consent of the licence holder, revoke the licence or itself, take steps to remedy the breach and can take action to recover any costs of doing so.

In cases where furniture, which would normally be permitted by a pavement or other licence has been placed on a relevant highway without the required licence, local authorities can give notice requiring the business to remove the furniture before a specified date and to refrain from putting furniture on the highway unless they gain a licence. If furniture continues to be placed on the highway, in violation 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 the costs have been paid. If within 3 months of the notice, the costs are not paid, the authority can dispose of the furniture by sale or other means and retain the proceeds.

It is important to note the grant of a pavement licence only permits the placing of furniture on the highway. A pavement licence does not negate the need to obtain approvals under other regulatory frameworks, such as the need for a licence to sell alcohol, and the need to comply with registration requirements for food businesses.

One of the benefits of the temporary pavement licence regime was that once a pavement licence is granted by the local authority, the premises benefits from deemed planning permission for the furniture for the duration of the pavement licence. This does not change with the new permanent pavement licensing regime.

The Council will need to consider several factors, when determining whether to approve a pavement application. These include whether additional local conditions might be needed to make it possible to approve an application which would otherwise be unacceptable.

When setting local conditions and determining applications, the Council will also want to consider the following factors:

- Public health and safety including security – for example, any reasonable crowd management measures needed because 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,
- considerations under the no-obstruction condition (set out in Section 3(6) of the 2020 Act) including the cumulative impact of multiple pavement licences in proximity, considering the needs of disabled people and 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 cycles movements.

There is no statutory right of appeal in relation to the Council's decision in relation to a pavement licence application. To date we are not aware of any authorities that have an appeal process, if this Council was to introduce such an appeals process, the fee income would need to cover these costs.

### **Sitting Out Licences**

A pavement licence is a licence granted by the District Council which allows the licence-holder to place furniture over certain highways. This is a regulatory function of the District Council set out in the Business and Planning Act 2020. The highways in question are not owned by the District Council, they are essentially owned by the relevant highway authority (invariably Derbyshire County Council). The procedure for granting a pavement licence is set out in the Business and Planning Act 2020, and we can only apply discretion as permitted by the Act.

A sitting-out licence is similar in that it is granted by the District Council, but they can only be used to allow the licence-holder to place furniture on land owned by the District Council. Sitting-out licences are not statutory licences (not issued by the Licensing Section) they are contractual; both public and private sector landowners have rights to permit activities on their land by virtue of being the land-owner, and a sitting-out licence is an agreement under which the District Council permits its land to be used. Sitting-out licences are not fundamentally different to a licence granted to use one of the District Council's parks for a community event. The conditions attached to a sitting-out licences granted by the District Council generally mirror the conditions attached to a pavement licence so far as possible, but this is a matter of policy and is not a legal requirement.

### **Options Considered**

Several options have been considered in respect of the fees for the Permanent Pavement Licensing regime in respect of new and renewal applications. The fee

should recover the costs of the Council whilst remaining simple and fair to all parties involved. The more complicated that the permanent pavement licensing regime is and the more steps that the Licensing Authority need to take to determine the licence application, the higher the fee that the Council must charge.

The options considered have been:

1. A tiering system with the number of tables – the fee would be calculated have been calculated based on the number of tables that a business may have, e.g., 1 – 3 tables, 4 – 9 etc. This was dismissed on the grounds that it would be complicated to administer as different tables used could have different capacity in seating, i.e., a picnic bench table would take 6 – 8 customers, whilst a small table may take 2 seats, but the businesses would be paying the same.
2. A system based on the turnover of the business – i.e., those bigger businesses pay a higher fee based on their turnover. The costs attributed to a pavement licence would not differ for a bigger company to that of a smaller one, as the process and procedures are the same. Administratively, obtaining the turnover of income, would be often impossible and legally it would be questionable if Licensing were entitled to this information, as the Business and Planning Act 2020 and then the Levelling Up and Regeneration Act does not include this.
3. A system based on the space taken by the pavement area – the fee would be based on measurements of the area. This could be administratively complicated as the measurement would be open to mis interpretation and likely to be very difficult to enforce.
4. A system based on eligibility for Small Business Rate Relief (SBRR). Finance to provide further information for discussion at the meeting.

A single fee creates a level playing field and allows all applicants and staff to know what is expected and the fee to be charged.

### **3. Financial**

The Permanent Pavement Licensing Regime laid out in the Levelling up and Regeneration Act 2023, which came into effect on 31st March 2024 caps the fee at £500.00 for a first time (Grant) application and £350.00 for renewal applications.

Currently the Council has 13 temporary pavement licences which are due to expire on the 30th September 2024. It is estimated that there could be many premises using outdoor tables and chairs that are not currently licensed.

On receiving details of the permanent Licensing Regime and the changes to be introduced, such as enforcement, previously carried out by Derbyshire County Council, an exercise was undertaken to consider the costs to the licensing section. The estimated cost to the Council would be £474.34 for a (first time) Grant and £ 310.11 for a renewal.

The costs are estimated based on what we think a perfect application would involve and over the length of two years of the licence. Many applications, particularly initially, are likely to be more complex and time consuming.

Each licence holder within their fee will also need to contribute towards more complicated situations and actual enforcement. The Council do not wish to be running at a deficit if van hire and storage facilities are required in the worse enforcement scenario.

Therefore, as the estimated £474 and £310 respectively is for a straightforward application it would be reasonable to recommend that we charge the maximum allowable, e.g., £500 and £350 to ensure we don't run at a deficit and costs are covered.

Over two years that would equate to £250.00 per year (£4.81 per week) for a new application and £175.00 (£3.37 per week) for a renewal application.

These proposed costs have been discussed with the Economic Development Manager of DDDC who agrees that the fees above would cover the costs of administration and agrees with the pricing structure proposed. This had been discussed with the DDDC Business Advisor and both were in agreement that the suggested payment and renewal fees (£500 and £350 respectively) are reasonable amounts for businesses to pay for additional outside seating for a two-year period.

Economic Development also advised that any businesses that were concerned they would not have the resources to meet the additional costs, could contact the Business Advisor directly, who would support them in looking at their overall business model

On contacting the Derbyshire Licensing Group no other Councils have set their permanent pavement licensing fees,

A set fee would be more favourable than tiered to avoid confusion for businesses. On speaking to the Chairman of NALEO (National Association of Licensing Enforcement Officers) he was not aware that any other Council was considering a tiered system.

Given that the fees are intended to offset the costs of providing the pavement licences, the financial risk is assessed as low.

No new Burdens Grant has been received for the introduction of the permanent pavement Licensing Regime.

#### **4. Legal Advice and Implications**

This report provides the Committee with an update changing the temporary Pavement Licensing regime that has been in place since 2020 with that of the Permanent Pavement Licence which commenced on the 31<sup>st</sup> March 2024.

#### **5. Equalities Implications**

When determining applications, the licensing authority will give due regard to the public and highway safety of other highway users in line with all the criteria it will consider in determining whether an application should or should not be granted. The statutory conditions also take account of the needs of persons with mobility and visual impairments. A full EIA has been conducted and is attached as Appendix C.

#### **6. Climate Change Implications**

6.1 There are no direct climate change implications arising from this report.

#### **7 Risk Management**

7.1 The District Council has a statutory responsibility to undertake the duties outlined in the report.

### **Report Authorisation**

Approvals obtained from:

	<b>Named Officer</b>	<b>Date</b>
Chief Executive	Paul Wilson	10/06/2024
Director of Resources/ S.151 Officer	Karen Henriksen	10/06/2024
Monitoring Officer	Helen Mitchell	10/06/2024