

## Notice of Non-Key Executive Decision

<b>Subject Heading:</b>	<b>To increase the fee for a pavement licence issued under the Business &amp; Planning Act 2020</b>
<b>Decision Maker:</b>	<b>Councillor Barry Mugglestone</b> Cabinet Member for Environment
<b>Cabinet Member:</b>	<b>Councillor Barry Mugglestone</b> Cabinet Member for Environment
<b>SLT Lead:</b>	<b>Helen Oakerbee,</b> Director of Planning
<b>Report Author and contact details:</b>	<b>Oisin Daly</b> Senior Public Protection Officer (Trading Standards & Licensing) Tel. 01708 433661 Email: Oisin.Daly@havering.gov.uk
<b>Policy context:</b>	Business and Planning Act 2020 Levelling Up and Regeneration Act 2023
<b>Financial summary:</b>	Current income per issued pavement licence is £100 for a new or renewal application. This is for a one-year licence. This generated £5200 in 23/24.  Legislative changes have set fees for new licences at £500 and renewals £350, for a two-year licence.

**Non-key Executive Decision**

	This is anticipated to be £9100 per annum.
<b>Relevant OSC:</b>	Places OSSC
<b>Is this decision exempt from being called-in?</b>	<i>The decision will be exempt from call in as it is a Non key Decision</i>

**Non-key Executive Decision**

**The subject matter of this report deals with the following Council Objectives**

People - Supporting our residents to stay safe and well	X
Place - A great place to live, work and enjoy	X
Resources - Enabling a resident-focused and resilient Council	X

## Part A – Report seeking decision

### DETAIL OF THE DECISION REQUESTED AND RECOMMENDED ACTION

This report seeks approval to:

1. Agree an increase in fees for pavement licences issued under the Business and Planning Act 2020 from £100 for a one year licence to £500 for a new licence and £350 for a renewal of a licence, issued for two years.

### AUTHORITY UNDER WHICH DECISION IS MADE

3.2.5

- (x) To approve all in year changes to both fees and charges.

### STATEMENT OF THE REASONS FOR THE DECISION

#### **Business and Planning Act 2020:**

Introduced during Covid, Section 1 of the legislation permitted hot food and drinks be consumed on the public highway, at tables and chairs and outside premises who had obtained a pavement licence.

Businesses initially benefitted from grants from the authority to cover the set £100 application fee.

The legislation was annually extended before being made permanent under Schedule 22 of the Levelling Up and Regeneration Act 2023 on the 31<sup>st</sup> March 2024.

As part of the amendments, the BPA 2020 at section 2(1A) sets out the new maximum fees:

#### 2 Applications

*(1) An application for a pavement licence made to a local authority must—*

*(a) be made in writing and in such form as the authority may specify,*

*(b) be sent to the authority using electronic communications in such manner as the authority may specify, and*

## Non-key Executive Decision

(c) be accompanied by such fee not exceeding **[F1]** the relevant amount] as the local authority may require.

**[F2(1A)]** In subsection (1)(c), “the relevant amount” means—

(a) £350, in the case of an application which—

(i) is made by a person who already holds a pavement licence, and

(ii) is in respect of the premises to which that existing licence relates (whether or not it is a renewal application), and

(b) £500, in any other case

In addition to the legislation, guidance has been issued by the Department for Levelling Up, Housing and Communities: [Pavement licences: guidance - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/guidance/pavement-licences-guidance)

Whilst the legislation permits authorities to issue licences of less than two years, the guidance is clear that this must only be where the authority can justify good reasons for doing so:

1. Duration
- 1.1 How long are pavement licences valid for?

*To help support local businesses and give them more certainty, the expectation is that local authorities are pragmatic and will grant licences the maximum 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.*

## **OTHER OPTIONS CONSIDERED AND REJECTED**

1. The Council does not agree to the licence fee increase.

This option was rejected, the authority issued 52 licences last financial year generating £5200 in revenue. The licensing department absorbed this additional work along with the handling of complaints related to the issued licences. The current revenue generated does not cover the cost to the authority of administering the scheme.

2. The Council decides not to adopt the legislation.

This is not an option as this is primary legislation, the council has a statutory duty to administer the licensing regime.

3. The Council decides to issue the licences for a shorter period than two years.

**Non-key Executive Decision**

This option was rejected, the government guidance issued is clear than only with good reason should licences not be granted for less than two years.

**PRE-DECISION CONSULTATION**

The implementation of the increase in fees and charges was discussed with the Head of Service and Team Leader responsible for Licensing.

**NAME AND JOB TITLE OF STAFF MEMBER ADVISING THE DECISION-MAKER**

Name: Oisín Daly

Designation: Senior Public Protection Officer (Trading Standards & Licensing)

Signature: *Oisín Daly*

Date: 12<sup>nd</sup> July 2024

## Part B - Assessment of implications and risks

### LEGAL IMPLICATIONS AND RISKS

The Council has a duty to administer the pavement licensing scheme under the Business and Planning Act 2020. These licences have now been made permanent by section 229 of the Levelling-Up and Regeneration Act 2023.

Section 8 of the 2020 Act details how the Council should have regard to statutory guidance issued in relation to pavement licences. The Council can only depart from the statutory guidance where there is reasonable justification for doing so on a case by case basis. At present the Council is failing to adhere to its duties under the statutory guidance. This decision will ensure the Councils compliance with guidance.

The guidance also states:

Local authorities must have regard to the Public Sector Equality Duty, under the Equality Act 2010 when devising and implementing the new licensing regime, which includes the need to have due regard to eliminate discrimination, harassment, victimisation, and any other conduct that is prohibited by or under the Act. Any businesses which apply for a pavement licence will also need to have regard to their own duties under the Equality Act 2010, such as their duty under section 29 of the Act not to discriminate in providing their service and the duty to make reasonable adjustments.

### FINANCIAL IMPLICATIONS AND RISKS

The income from the pavement licensing regime to date is set out in the table below.

<b>Income</b>	<b>21/22</b>	<b>22/23</b>	<b>23/24</b>
	£5400	£2500	£5200

To date there have been nine applications, five new and four renewals, since the 1<sup>st</sup> of April generating income of £900.

The average processing time for a new licence is three hours.

Approximately 27 officer hours have been spent on these applications which equates to £33 income per officer hour. This does not account for any subsequent complaints which may arise from the issuing of such licences.

Were the fees and charges set at the maximum permitted, then these 9 applications would have generated £3900, albeit they would have been issued over two years.

The current fee structure does not cover the costs of administering the scheme. Were the fees to be increased it would allow for processing costs of applications to be

### **Non-key Executive Decision**

covered by the income, as well as additional income which is required to be assigned for investigating complaints and compliance.

This would help to bridge the gap between currently running the scheme at a loss and ensuring that costs are recovered.

### **HUMAN RESOURCES IMPLICATIONS AND RISKS (AND ACCOMMODATION IMPLICATIONS WHERE RELEVANT)**

There are no HR implications and risks associated, the scheme is currently administered by the licensing department within Public Protection.

### **EQUALITIES AND SOCIAL INCLUSION IMPLICATIONS AND RISKS**

The guidance details:

Local authorities must have regard to the Public Sector Equality Duty, under the Equality Act 2010 when devising and implementing the new licensing regime, which includes the need to have due regard to eliminate discrimination, harassment, victimisation, and any other conduct that is prohibited by or under the Act. Any businesses which apply for a pavement licence will also need to have regard to their own duties under the Equality Act 2010, such as their duty under section 29 of the Act not to discriminate in providing their service and the duty to make reasonable adjustments.

The Public Sector Equality Duty (PSED) under section 149 of the Equality Act 2010 requires the Council, when exercising its functions, to have 'due regard' to:

- (i) The need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;
- (ii) The need to advance equality of opportunity between persons who share protected characteristics and those who do not, and;
- (iii) Foster good relations between those who have protected characteristics and those who do not.

Note: 'Protected characteristics' are age, sex, race, disability, sexual orientation, marriage and civil partnerships, religion or belief, pregnancy and maternity and gender reassignment.

The Council is committed to all of the above in the provision, procurement and commissioning of its services, and the employment of its workforce. In addition, the Council is also committed to improving the quality of life and wellbeing for all Havering residents in respect of socio-economics and health determinants.

An EqHIA (Equality and Health Impact Assessment) is usually carried out and on this occasion this isn't required. The proposal is to increase fees and extend the duration of licences, the licensing scheme will not change from its current format.



**Non-key Executive Decision**

The Council seeks to ensure equality, inclusion, and dignity for all in all situations.

There are not equalities and social inclusion implications and risks associated with this decision.

**ENVIRONMENTAL AND CLIMATE CHANGE IMPLICATIONS AND RISKS**

Not applicable

**BACKGROUND PAPERS**

N/A

**APPENDICIES**

**N/A**

**Non-key Executive Decision**

**Part C – Record of decision**

I have made this executive decision in accordance with authority delegated to me by the Leader of the Council and in compliance with the requirements of the Constitution.

**Decision**

Proposal agreed

**Details of decision maker**

Signed: *Barry Mugglestone*

Name: Barry Mugglestone

Cabinet Portfolio held:

CMT Member title:

Head of Service title

Other manager title:

Date: 22/07/2024

**Lodging this notice**

The signed decision notice must be delivered to Democratic Services, in the Town Hall.

**For use by Committee Administration**

This notice was lodged with me on \_\_\_\_\_

Signed \_\_\_\_\_