

Pavement Licences – Guidance for Applicants

1. Introduction

The Business and Planning Act 2020 includes temporary provisions designed to make it easier for premises serving food and drink such as bars, restaurants and pubs to seat and serve customers outdoors, maximising their ability to trade, assisting them to operate safely and promoting economic recovery in response to the impact of the global COVID-19 pandemic.

The Act creates a temporary regime for processing applications for 'pavement licences' to authorise businesses such as cafes, restaurants and bars to place furniture on the highway. This is a fast-track procedure to get the same permissions you normally would from a Part 7A Highways Act permit, street trading consent and planning permission (change of use).

The temporary licensing regime is due to be in place until 30 September 2023 when these licences are all due to expire in accordance with section 10 of the Act. This guidance will be kept under review and may be amended periodically as required.

2. Scope

2.1 Definition of pavement licence

A pavement licence allows the holder to place removable furniture on a section of the highway adjacent to the premises in relation to which the application was made, for certain purposes.

2.2 Eligible Businesses

A business which uses (or proposes to use) premises for the sale of food or drink for consumption (on or off the premises) can apply for a licence. Businesses that are eligible include: public houses, cafes, bars, restaurants, snack bars, coffee shops, and ice cream parlours.

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.

2.3 Eligible Locations

Licences can only be granted in respect of highways listed in 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. Highways maintained by Network Rail or over the Crown land are exempt (so a licence cannot be granted).

A licence is not required for furniture sited on private land.

The licensed area is normally expected to be an area directly in front of and visible from the premises. The area should not extend beyond the width of its frontage unless there are exceptional circumstances.

2.4 Type of furniture permitted

The furniture which may be used is:

- counters or stalls for selling or serving food or drink;
- tables, counters 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.

This furniture is required to be removable, which in principle this means it is not a permanent fixed structure, and is able to be moved easily, and stored away when not in use. Furniture should also be of a type that is not likely to cause damage to the highway surface.

The Council would also expect the type of furniture to be 'in keeping' with the local area.

2.5 Planning Permission

If a pavement licence is granted, or deemed to be granted, the applicant will also benefit from deemed planning permission to use the land for anything done pursuant to the licence while the licence is valid and remains in force.

2.6 Existing tables/chairs

The new pavement licence regime runs alongside the provisions in Part 7A of the Highways Act 1980, which remain in place. Any existing permissions issued under Part 7A of the Highways Act 1980 remain valid.

3. Application Process

3.1 Application requirements

An application for a pavement licence must be made by email on the Council's application form and accompanied by the following:

- Photos or brochures showing the proposed type of furniture
- Public liability insurance to a minimum value of £5 million
- Site plan to a suitable scale or with clear measurements showing:
 - property boundary and proposed boundary of area to be covered by the pavement licence with a red line to indicate the area to be licensed
 - building and kerb lines
 - furniture layout showing the position and number of proposed tables and chairs, together with any other items of furniture to be placed on the highway
 - points of access and egress
 - position of any lighting columns, litter bins, road signs or other existing street furniture

An application will not be considered complete until the application form, all required documents and the application fee have all been received. The public consultation period will not commence until the day after a valid application and fee is received by the Council. The application form is available on the Council's website.

3.2 Fees

The fee for applying for a licence is £100. This charge covers inspection and administration costs. This is not refundable in the event that an application is refused, or a licence subsequently surrendered, suspended or revoked.

3.3 Consultation

The consultation period is 7 days, starting with the day after the day on which a valid application was made to the Council (excluding Christmas Day, Good Friday or bank holidays).

The Council will publish details of the application on its website.

The Council is required by law to consult with the Highways Authority, and will also consult with the following:

- Planning
- Licensing Authority
- Thames Valley Police

The Council must take into account any representations received during the consultation period and consider these when determining the application.

3.4 Site Notice

The applicant for a pavement licence must on the day an application is made, fix a notice of the application on the premises to which it relates. The notice must be easily visible and legible to the public and the applicant must ensure the notice remains in place for the whole 7 days of the public consultation period as detailed above. The template notice is available on the Council's website

Applicants are strongly encouraged to talk to neighbouring businesses and occupiers prior to applying to the local authority, and so take any issues around noise, and nuisance into consideration as part of the proposal.

Applicants should record and retain evidence that they have complied with all requirements, including posting the notice at their premises. It is recommended that you take a photo of the notice on a mobile phone each day during the consultation period so that you can prove the notice was there for the required period.

3.5 Site Assessment

All applications will be considered on their merits. The following matters will be used by the Council and consultees in considering the suitability of the proposed application:

- public health and safety – for example, ensuring that uses conform with latest guidance on social distancing and any reasonable crowd management measures needed as a result of a licence being granted and businesses reopening;
- public amenity – will the proposed use create nuisance to neighbouring occupiers by generating anti-social behaviour and litter; and
- accessibility – taking a proportionate approach to considering the nature of the site, its surroundings and its users, taking account of:
 - 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 structures in place on the footway that already reduce access;
 - the impact on any neighbouring premises
 - the recommended minimum footway widths and distances required for access by mobility impaired and visually impaired people as set out in Section 3.1 of [Inclusive Mobility](#), and

- other users of the space, for example if there are high levels of pedestrian or cycle movements.

Emergency exit routes, including those of adjacent buildings, should not be obstructed by the furniture and emergency service vehicles must have access along all streets at all times, even in pedestrianised streets.

In granting pavement licences, it is important to ensure that the rights and safety of other persons using the highway are not detrimentally affected, with special attention to wheelchair users and those with impaired vision. The licensed area should be at least partially enclosed, to demarcate the area and to contain the furniture, thus making it distinguishable to other pavement users, and particularly to assist blind and visually impaired pedestrians. Any barrier should ideally have solid bars/elements at around 100mm and 1000mm above ground level.

The layout of furniture and means of enclosure will only be approved if adequate provision has been made for customers with disabilities.

The council must also have regard to its wider duties, including those under the Equality Act 2010, Human Rights Act 1998, Environmental Protection Act 1990, and the Crime and Disorder Act 1998.

All licences will be issued with a condition requiring a licence holder to make reasonable provision for seating where smoking is not permitted. This means that where businesses provide for smokers, customers will also have the option of sitting in a non-smoking area. Ways of meeting this condition could include:

- Clear 'smoking' and 'non-smoking' areas, with 'no smoking' signage displayed in designated 'smoke-free' zones in accordance with Smoke-free (signs) regulations 2012 which can be viewed [here](#).
- No ash trays or similar receptacles to be provided or permitted to be left on furniture where smoke-free seating is identified.
- Licence holders should provide a minimum 2 metre distance between non-smoking and smoking areas, wherever possible.

3.6 Determination

Once the application is submitted the Council has 14 days from the day after the application is made (excluding public holidays) to consult on and determine the application. This consists of 7 days for consultation, and then 7 days to consider and determine the application after the consultation.

If the Council determines the application before the end of the determination period the local authority can:

- grant the licence in respect of any or all of the purposes specified in the application,
- grant the licence for some or all of the part of the highway specified in the application, and impose conditions, or
- refuse the application.

If the Council does not determine the application within the 14 day period, the application will be deemed to have been granted subject to any local conditions published by the council at the time the application is submitted.

In deciding the public consultation period or the determination period, as referenced above, no account will be taken of a bank holiday, nor of Christmas Day or Good Friday. In all other instances the period shall be calendar days

3.7 Issue of licences

The Council may approve applications meeting the criteria contained within these guidelines.

On approving the application, the Council will issue a pavement licence to which conditions will be attached. The licence will also contain specific terms such as days and hours when furniture is permitted for use, and a copy of the plan to confirm the authorised positions for furniture.

If the Council does not decide the application within the determination period, the licence which was applied for is deemed to be granted for one year (although not beyond 30 September 2021), with the Council's standard conditions.

The expectation from the Government is that local authorities will grant licences for 12 months or more unless there are good reasons for granting a licence for a shorter period such as plans for future changes in use of road space. As such, the Council will normally grant applications until 30 September 2021.

The Council generally will only permit pavement licences to operate from 07:30 – 21:00 Monday to Sunday unless otherwise determined.

Applications outside these hours will be assessed in terms of the criteria detailed above. Applicants may wish to include additional information as to how they will prevent nuisance affecting nearby residents. The Council also retains the right to specify permitted hours on the licence that are reduced from those specified above in appropriate circumstances.

Licences are not transferable, so a new application would be required to issue a licence to a new licence holder.

3.8 Refusal of Applications

If the site is deemed unsuitable for a pavement licence, or if relevant representations are made which cannot be mitigated by conditions then the application may be refused.

There is no statutory appeal process against a decision to refuse an application.

4. Conditions

Any licence which is granted, or deemed to be granted, will be subject to:

- The Council's standard conditions;
- Any additional conditions which the Council imposes as a result of the individual circumstances of the case; and
- The National conditions.

The Council's standard conditions are available on the Council's website. In some cases, extra measures may be required. This will be determined when assessing any application, on a case by case basis.

Where a local authority sets a local condition that covers the same matter as set out in national published conditions, then the locally set condition takes precedence over the national condition where there is reasonable justification to do so.

However, this is not the case for the statutory no-obstruction and smoke-free seating conditions which apply to all licences. These condition can also be found on the Council's website.

5. Enforcement

An obstruction of the highway is an offence under the Highways Act 1980 and will be dealt with by the Highway Authority or the Police. The highway authority retains the power under s.149 of the Highways Act 1980 to remove items on the highway which are a nuisance – whether they are licensed or not. This power is exercisable immediately in cases where the furniture causes a danger.

Obtaining a licence does not confer the holder immunity in regard to other legislation that may apply, such as health and safety legislation, food hygiene requirements, Licensing Act 2003 premises licence conditions and any social distancing controls.

All enforcement activity by the council will be undertaken in line with our Enforcement Policy. Periodic inspections of premises with pavement licences will be made by the council to ensure compliance with the licence and conditions.

If there is a breach of a licence condition, the council may either revoke the licence, or serve a notice on the licence holder requiring them to take steps to remedy the breach within a specified time. If the licence holder fails to comply with a notice, the council may revoke the notice or take the steps itself and recover the costs of doing so from the licence holder.

The council may also revoke a licence where:

- there are risks to health or safety – for example by placing tables and chairs too close together;
- the highway is being obstructed (other than by anything permitted by the licence);
- there is anti-social behaviour or public nuisance;
- it comes to light that the applicant provided false or misleading statements in their application; or
- the applicant did not comply with the requirement to affix the notice to notify the public for the relevant period.

The Council may also revoke the licence where all or any part of the area of the relevant highway to which the licence relates has become unsuitable for any purpose for which the licence was granted or deemed to be granted. The Council will give reasons where these powers are used.

6. Further information and contact

This guidance covers the Temporary Permission for Pavement Licences under the Business and Planning Act 2020 which are scheduled to expire on 30 September 2022. This guidance will be reviewed from time to time should changes occur in relevant legislation or the nature of pavement licences generally.

The pavement licence application form, standard and National conditions can be found on our website.

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